Serfoji Rajah

A

# DIGEST

OF

# HINDU LAW,

ON

*CONTRACTS AND SUCCESSIONS*

WITH A

## COMMENTARY

BY JAGANNÁT'HA TERCAPANCHÁNANA.

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Translated from the Original SANSCRIT,

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## Book V.—*On* Inheritances.

### CHAP. II.

ON THE

# DISTRIBUTION

MADE BY A FATHER IN HIS LIFETIME.

After incidentally discussing, in this place, the portion of an eldest son, we proceed to explain the proposed subject of partition made by a father. He may distribute, at his pleasure, immoveable and other property acquired by himself. In the first place, he may reserve for himself as much as he pleases. Next, having given to his first-born a suitable portion, according to law, as a token of greater veneration due to him, let him make an equal partition among all his sons. But if one surpass the rest in piety or the like, a greater share should be allotted to him; or if his conduct be irreverent, a less share: if a *heinous* offence be imputable to one son, such as enmity to his father or the like, no share shall be given to him; for it is recorded in the texts of Yájnyawalcya, Vishnu and Hárita (XXVI, XXV, and XXIII), that partition *made* by a father is solely regulated by his pleasure, and that he may reserve a considerable residue, of which the quantity is not limited. The double share, assigned to the father, must be understood as restricted to the patrimony left by the grandfather: yet he may distribute the precious stones, pearls, and the like, left by the grandsire, in the same mode with property acquired by himself; agreeably to the text (Book II, Chap. iv. V. 13.), "of precious *metals* or stones,

"of pearls, coral, and other moveables, the father has power to "give or sell the whole." Such is the opinion of JÍMÚTAVÁHANA and others. The texts of BAUDHÁYANA (XL) and others suggest equal partition among sons, and a greater share for the eldest. In applying the text of CÁTYÁYANA (XXVII), those of BAUDHÁYANA and the rest must be excepted in the cases stated by RAGHUNANDANA and others, when filial piety, a large family to maintain, inability to earn a livelihood, or other allowable circumstance justifies unequal distribution; or when disrespect or hatred towards the father, or other *bad quality*, justifies total exclusion. It should not be argued, that the phrase, "without a sufficient cause," intends those virtues which constitute the seniority of sons. A father has power to give greater shares to sons who are eminent for piety or the like, though not endowed with such virtues; for NÁREDA (XXVIII) declares a father to be destitute of such power then only when he is governed by lust, wrath, or the like. But if a malicious father do not call dutiful a son however pious, but born of an unloved wife, and *on the contrary* call him an enemy to his father, what shall be the rule of decision? Since the father has full power over property acquired by himself; and since the greater allotment, in right of duty and piety or the like, depends *solely* on the option of the father; if he do not give it, who shall compel him? But if he exclude his son from a share, calling him inimical to his father, he must prove that enmity in the presence of the king, or before a public assembly, and then refuse a share; exclusion from inheritance, on his own simple assertion, is not valid. But if he wish to allot a greater share to the son of a favourite wife, though not dutiful, calling him pious, on account of his mother, he can only give that greater allotment after proving the fact *asserted*.

A father has dominion over property acquired by himself: should he give no share to any one son *though* guilty of no offence, and give a share to one guilty of offences, who shall punish him? It cannot be affirmed, that, under the authority of the texts cited from CÁTYÁYANA and BAUDHÁYANA, the king may punish such a father. The law propounds the moral offence committed by a father slighting such precepts, but ordains no fine; like the giver of gold to an improper object, *thereby*

*committing*

*committing an offence, but incurring no civil penalty.* When this *ſeeming difficulty* is propoſed, ſome lawyers reply: Since the ſon has a title in the father's eſtate at the very moment of his birth, without any other cauſe, (for the particle is excluſive in the text of GÓTAMA, "even by birth alone a man may gain ownerſhip;") a father, making an unequal partition, without attending to the rules preſcribed in codes of law, and giving away the joint property to any one perſon, ſhall be amerced by the king. It ſhould not be argued from the text of DÉVALA above cited (V), that they have no ownerſhip while the father lives. There is no difficulty, if the want of ownerſhip conſiſt in the want of right to aliene *ſuch property* at pleaſure: and it is ſeen, that a ſon is incapable of aliening *wealth* at pleaſure while his father lives, even though he poſſeſs *ſeveral* property: as in the text *quoted in a former book* (Book II, Ch. iv. V. 56. and Book III, Chap. i. V. 52. 1.) the phraſe, "they have no wealth excluſively their own," muſt be explained as ſignifying only that they are incapable of aliening it at pleaſure: they are not deſtitute of ownerſhip in ſuch wealth; for, were it ſo, it would incidentally prevent religious ceremonies defrayed out of their wealth. Let it not be alleged, that, ſince the words "what they may gain" occur in that precept*; and ſince it is neceſſary to eſtabliſh ownerſhip, becauſe religious rites could not otherwiſe be defrayed; therefore it is right to explain the text as ſignifying want of dependence: but in this caſe, ſince religious rites may be accompliſhed with money furniſhed by the father, there is no failure in the performance of ceremonies: why then take want of ownerſhip as ſignifying want of independence? The obſervation of JÍMÚTAVÁHANA is therefore juſtified. Since ſome title muſt be eſtabliſhed, becauſe the texts of law which forbid unequal partition would otherwiſe be irrelevant, therefore, in this place alſo, the term "want of ownerſhip" muſt, from parity of reaſoning, ſignify want of independence. Nor ſhould it be affirmed, that the law merely ſhews a ſpiritual offence in

 making

* Theſe words do not occur in the text cited: I ſuppoſe an alluſion to the text of NA'REDA (Book III, Ch. i. V. 51), which differs from that of MENU (V. 52. 1. of the ſame chapter), in ſubſtituting the word now quoted, *arjayanti*, they acquire or gain, for *ſamadhigachch'hanti*, they earn. Or elſe it is an error purely accidental, after citing a text of MENU, to refer to a ſimilar text of NA'REDA. T.

making unequal partition, as in neglecting a priest who attends in consequence of an invitation to assist at a *śráddha:* the priest, who attends, has no property in the food provided for that celebration, *though it be immoral to withhold it.* The text of NÁREDA (XXVIII) shows, that, if an unequal division be made by a father, it is invalid. If unequal partition be erroneously made by the owner, and his own property be immediately devested by his volition, and property vested in all the sons, or in him who receives the greater portion, what useful consequence could follow from the consideration, that the father had no power to make such a distribution, *which, nevertheless, would remain in force?* Therefore is the title of sons to their father's wealth, even during his life, *admitted;* but not the power of aliening it at pleasure. Accordingly the text *cited in a former book* (Book II, Ch. iv. V. 14.) is pertinent in its literal sense: conceiving, that the consent of the son is presumed in the case of precious stones, pearls, or other things, which have no long duration, being given away by the father, this is propounded in respect of immoveable property; and the practice is such. Nor should it be argued, that a son cannot have property in the estate while the father lives, since it has been established that one property resists another concurrent title, lest property, by occupancy, should arise in respect of a chattel not abandoned by its owner. It is admitted, that thieves and the like have property, by occupancy, even in a chattel which was not abandoned by the owner. Or supposing it true, the difficulty is removed by affirming that one property only resists an incompatible property. The title of three descendants, during the owner's life, is mentioned by BAUDHÁYANA (III), not as producing property *immediately* vested in the son or other heir, but as producing a right which entitles him to aliene it at pleasure, but which takes effect only after the father's property has expired. Thus they resolve the seeming difficulty.

But that is wrong; since there is no authority for establishing such property within *property;* and the law of equal partition (XL) bears a different import. For example; equal partition may be *considered as* preceptive, like the maintenance of the family out of a man's own wealth. Thus the support of a married daughter residing in her father's house (for so the term is ex-

plained

plained by VIJNYÁNÉSWARA) is approved by YÁJNYAWALCYA (LXXVII), although ſhe have no title to the eſtate; and there is no difference, ſo far as proof of property is concerned, between *the* enjoyment *of a maintenance* and the receipt of a ſhare. VACHESPATI BHATTACHÁRYA and others alſo do not admit the ſon's veſted title in the paternal eſtate during his father's life.

## LXXVII.

YÁJNYAWALCYA:—After aſſigning a ſufficient ſupport to infants, to a married daughter reſiding in the houſe of her father, to aged perſons, pregnant women, perſons afflicted with diſeaſe, damſels *yet unmarried*, gueſts and ſervants, the huſband and wife may enjoy the reſidue.

*On this ſubject* it is ſaid; the verb "divide" *(bhaj)*, in the preſent title, denotes ownerſhip depending on affinity. There is ſo much difference, as it relates to the thing or the perſon. Conſequently, in anſwer to the queſtion, 'what ſhall be equal?' which ariſes on the terms of the text "equal to all," adducing the verb 'divide' or make a partition *(vibhaj)*, which is found in a text of ſcripture "*(vibhajyát)* let him diſtribute, &c." partition *(vibhága)* muſt be affirmed to be the ſubject *of that epithet*: for the phraſe, "when the father makes a partition among his ſons," ſuggeſts property veſted in the ſons in right of affinity. Again; in the caſe of partition by a father, his property being deveſted by his chooſing to make a diſtribution, and a ſimilar title being veſted in all *his ſons*, the right of receiving a greater allotment accrues to the eldeſt, and to thoſe who are eminent for duty and piety or the like, by conſent of the reſt, in conformity with the law. But if the father make a gift to one ſon, in the form of a relinquiſhment, producing the effect of inveſting another with property, it is valid, like a gift to a ſtranger, whether the donation conſiſt of immoveable property or the like acquired by himſelf, or of wealth inherited from the grandfather. However, a father, giving away an immoveable eſtate, which has deſcended from the grandfather, without the conſent of his

 ſons,

ſons, incurs the guilt of a moral offence. Under the text of YÁJNYAWALCYA (XXXIII) ſhould larger portions be aſſigned by the father's choice to ſons eminent for piety or the like, *ſtill* their property originates ſolely in their affinity. Conſequently, in the caſe of partition by a father, both the volition of one who is undiſturbed by diſeaſe or paſſion, and the affinity of the ſon, contribute to veſt property. As for what is ſaid, that, ſince a title in the eſtate of the father and grandfather is veſted by birth alone, therefore the father is independent in the uſe of all property except immoveables, *whether he uſe it* for gifts made through favour, for the ſupport of the family, for relief from diſtreſs, or for other purpoſes either neceſſary or preceptive; but he is controled by his ſons and the reſt in reſpect of immoveable property, whether acquired by himſelf, or inherited from his own father or other anceſtor (Book II, Chap. iv. V. 14. that is wrong: for it would contradict the text of DÉVALA, "they have not ownerſhip, *or full dominion*, while a faultleſs father lives" (V).

But if a paternal grandfather make a partition among his grandſons, whoſe own fathers are deceaſed, and in that caſe give more than his equable ſhare to any one grandſon, becauſe he is unable to earn a livelihood or the like, what ſhall enſue? From parity of reaſoning, ſuch unequal diſtribution is valid. In like manner, ſhould any one grandſon betray hatred of his father or paternal grandfather, he, but not his brother, ſhall be excluded from a ſhare. This ſhall be diſcuſſed at large.

The rule of VISHNU expreſſing, "if a father make a partition with his ſons" (XXV), and the ſcripture intimating partition of heritage in favour of ſons, partition among ſons alone is found to be mentioned: how then can a diſtribution be made among grandſons, by a paternal grandfather?

## LXXVIII.

YÁJNYAWALCYA:—But to grandſons by different fathers ſhall be allotted the portions of their reſpective fathers.

[illegible] grandſons, of whom the fathers are different, ſhall be allotted [illegible] portions in right of their ſeveral fathers: all the grandſons

ſons ſucceed to the proper ſhares of their reſpective fathers. Conſequently, ſo many ſhares ſhould be formed as there were ſons of the original proprietor, and ſhould be given to their reſpective ſons; and let them take thoſe ſhares, whether they be uterine brothers or born of different mothers, and whether they live together, or ſubdivide the ſhares according to the number of their own brothers reſpectively: ſuch is the meaning of the text. This rule of adjuſtment is grounded on poſitive texts.

The *Mitácſharà.*

Should not this text be affirmed to relate to partition after the death of the father, ſince YÁJNYAWALCYA, having propounded partition among brothers after diſcuſſing that which is made by the father, ſubjoins this text? No; for, immediately after this text, he propounds a rule reſpecting partition made by a father (XCII): accordingly the text of MENU (XXIX) has a ſimilar import. This text, therefore, being applicable to both, muſt be conſidered as relating to both *ſubjects:* but the text, which will be cited (LXXXIII), concerns only partition made by a father; *ſince* it is placed immediately after that topick.

## LXXIX.

CÁTYÁYANA:—Should a ſon die before partition, his ſhare ſhall be allotted to his ſon, provided he had received no fortune from his grandfather:

2. That ſon's ſon ſhall receive his father's ſhare from his uncle, or from his *uncle's* ſon; and the ſame *proportionate* ſhare ſhall be allotted to all the brothers, according to law:

3. Or, *if that grandſon be alſo dead,* let his ſon take the ſhare; beyond him, ſucceſſion ſtops.

MISRA reads *avibhacté nijé prété* inſtead of *avibhacté mrïté putré*, and expounds the text by ſupplying the word "brother" (ſhould a brother, *being* himſelf *entitled to a ſhare*, die before partition, &c.) "His ſon" *ſignifies* the ſon of that brother.

 "Fortune;"

"Fortune;" a portion. What ſhare ſhall the brother's ſon receive? The legiſlator replies to that queſtion; "his father's ſhare." "His ſon," *in the ſubſequent verſe* (LXXIX 3,) *ſignifies* the great grandſon of him whoſe eſtate is diſtributed. Hence the eſtate of the houſeholder ſhall be divided according to the number of ſons. The ſhare, therefore, which is allotted to a ſon, ſhall be received by his ſon or grandſon, not by his great grandſon; for beyond the ſon's grandſon ſucceſſion ſtops. This relates to parceners living together.

It is proper in this inſtance to explain the word "himſelf" *(nija)* the perſon who receives a ſhare of the eſtate, whether ſon or brother: elſe the text could not relate to the caſe of partition made by a father. It is not his meaning that the text relates not to partition by a father; nor does the text contain the word "brother."

"Before partition," or literally "undivided," denotes one with whom partition has not been made. May not ſtrangers be propoſed as undivided perſons? No; for the term is uſed with reference to the right of partition; as the word *d'hênu* (ſucked) ſignifies a *milch* cow, and *pancaja* (produced in mud) ſignifies a lotos: and the right of partition conſiſts in the relation of the ſon to the original poſſeſſor and the like. Even the ſon of the daughter of a man who leaves no male iſſue, and the ſon of a mother's ſiſter, are not intended by the term "undivided," ſince they belong to other families. Or, in other inſtances, the term 'coparcenary of undivided perſons,' ſignifies the joint ownerſhip of the ſame thing; but here it bears a literal ſenſe, and ſtrangers are excluded by the ſubject, namely "ſon:" a ſon may be truly ſaid to be unſeparated from his father.

"Provided he had received no fortune" (LXXIX 1): otherwiſe, if the original proprietor, having made a partition among his ſons or grandſons, live reunited with ſome of his ſons, partaking of the ſame food with them, and if partition be again propoſed after a great lapſe of time, a ſhare would be due to his grandſon, even in this partition, as in the former diſtribution. If the reading cited in the *Retnácara* be followed *(avibhactê mrĭtê putrê)*, the legiſlator, having ſo far propounded partition by a father, proceeds to the ſubject of partition among brothers; 'he ſhall receive his father's ſhare; or, ſhould he be

dead,

dead, his ſon ſhall take that ſhare:' the text muſt be ſo ſupplied. But CHANDÉSWARA ſays; 'If any one of the brothers be living, the ſon of that brother ſhall have no ſhare.'

## LXXX.

DÉVALA:—As the ſuſpended water-pot matures the *pippala* tree, ſo a father, a grandfather, and a great grandfather cheriſh a ſon from the moment of his birth,

2. With honey, fleſh-meat, pot-herbs, milk and milky food; *reflecting*, "he will give us the annual "*śráddha*, and that which is offered under the "lunar aſteriſm *Maghá*."

From this text of DÉVALA, JÍMÚTAVÁHANA argues, in the ſection on Partition among Brothers, that 'ſons and the reſt of 'three perſons have an equal title to the ſucceſſion, becauſe they 'equally confer benefits on the perſon from whom they inherit: 'their title is not ſucceſſive in the order of proximity, the title of 'the grandſon on failure of a ſon, and the title of the great 'grandſon on failure of a ſon's ſon. If that be the caſe, have a 'grandſon and a great grandſon, although their own fathers be 'living, a title to the ſucceſſion? No; for they do not confer 'immediate benefits, ſince they are not entitled to offer the 'double ſet of oblations. If one ſon have left three children, 'and the other ſon be living, then, on the ſuppoſition of equal 'benefits conferred, would not the eſtate be divided into four '*equal* ſhares? No; ſince the right of ſons is grounded on their 'birth and relation to their father, their ſons can only have a 'claim to ſo much as they were themſelves entitled to; the 'three *grandſons* have a right to one half of the eſtate, and their 'uncle to the other half.' To this it may be objected, that, if there be two ſons, and one has a grandſon whoſe own father is deceaſed, why ſhould not that grandſon, ſucceeding to his deceaſed father, have a title to a ſhare of the *common* eſtate, although his

his own paternal grandfather be living. Again; the male iſſue of a ſon, who is become a recluſe, would have no title to ſucceſſion. It ſhould not be affirmed, that a great grandſon, whoſe own father is deceaſed, deriving his title through his own grandfather, can only have a right to the property which accrues to that anceſtor, and is debarred by its being veſted in his grandfather. There would be no ground of choice (on JÍMÚTAVÁHANA'S ſuppoſition) whether property ſhould veſt in the ſon or in the great grandſon. In the ſilence of the law, it would not be poſſible to eſtabliſh the ſuperior right of the ſon.

## LXXXI.

DÉVALA:—Partition of heritage among undivided parceners, and a ſecond partition among divided relatives living together *after re-union*, ſhall extend to the fourth in deſcent: this is a ſettled rule.

This text may alſo relate to partition by a father, in this manner: among undivided parceners, between whom no partition has taken place, and among divided relatives, who have received a diſtribution, but who are reunited and live together, partition, and *in the laſt caſe* a ſecond partition, may be made with the original owner or his iſſue, as the caſe may be, as far as the fourth in deſcent or great grandſon of the original owner. "Second" does not relate to partition among undivided parceners; for it is a rule, that an epithet which is liable to objection is ſuperfluous.

## LXXXII.

DÉVALA:—So far, *namely as far as the fourth in deſcent*, relatives are *ſapindas, or connected by funeral oblations*; beyond him the funeral cake is reſcinded: Sages declare partition of inheritable property to be co-ordinate with the gift of funeral cakes.

"So

"So far," as far as the fourth in defcent, relatives, or perfons fprung from the *fame* family, are *fapindas*: for example, one gives the funeral cake, the other three receive the oblation: hence there is a mutual connexion, by the gift and receipt of funeral cakes, between four perfons. And this connexion of *fapindas* regards inheritance; but the connexion of *fapindas*, in refpect of impurity by reafon of the dead, extends to the feventh in defcent, including the anceftors, who partake of the rice wiped off the hand with which the funeral balls were offered*. This fhall be difcuffed in its place; of what ufe would be a mifplaced difquifition? "Beyond him, (beyond the fourth in defcent,) the funeral cake is refcinded;" for there is not, between more diftant relatives, the mutual connexion of giving and receiving the funeral balls. We thus expound the text.

"Sages declare," &c.; they declare the fucceffion of inheritable property to be co-ordinate with the gift of funeral cakes. Confequently, he who offers the double fet of oblations, and the funeral cake, fucceeds to the heritage. But CHANDÉSWARA fays, 'this text is applicable when, partition not having been made, property, not enjoyed by one coheir, is folely enjoyed by another refiding in the fame province.' It fhould be here remarked, that if a fon die after partition, but fome property remained in coparcenary, a fhare of that undivided property muft be given to the fon of the deceafed when a partition of it is made.

## LXXXIII.

YÁJNYAWALCYA:—When the father makes an equal partition among his fons, his wives muft have equal fhares *with them*, if they have received no wealth either from their lord or from his father.

If he make an equal partition among his fons by his own choice, he muft give equal fhares to fuch of his wives alfo as have no male iffue. The *Dípacalicá*.

* MENU, Ch. 3. V. 216.

HÉLÁYUDHA

HÉLÁYUDHA says, 'Wives who have no sons are here intended.' And JÍMÚTAVÁHANA also concurs in that opinion.

## LXXXIV.

VYÁSA:—But the wives of the father, who have no sons, are declared entitled to equal shares *with the sons of other wives:* and so are all the wives of the paternal grandfather; they are pronounced equal to mothers.

"Of the father;" the sixth case with the active sense: 'a partition being made' must be supplied. Consequently, a partition being made by a father, his wives, who have no sons, are declared entitled to equal shares. Such is his (JÍMÚTAVÁHANA'S) opinion; and RAGHUNANDANA and others concur in the same interpretation. It should not be argued, that the construction of the text is, "the wives of the father;" and consequently, when partition is made by sons after his death, the wives of their father, who have no male issue, namely their stepmothers, shall have equal shares; and the text therefore relates to partition made by sons. When partition is made by sons, the law does not allot a share to the stepmother, who has no male issue. Nor should it be argued that this text of VYÁSA is alone an ordinance of sufficient authority. There is no difficulty in referring it to partition by a father. Nor should it be argued that the text of VRĬHASPATI (LXXXV) is an ordinance of that import, both dam and mother (*jananì* and *mátrĭ*, genitrix et mater) being inserted to evince that both mother and stepmother are meant.

## LXXXV.

VRĬHASPATI:—On the death of the father, the mother (*jananì*) has a claim to an equal share with her own sons; *his* mothers (*mátarah*) take the same share; and the *unmarried* daughters each a fourth of a share.

Since

Since the word "mothers," requiring elucidation (mothers of whom?), might first suggest "son" for the answer, because he is the *most obvious* agent in the sentence (as in the phrase, 'he, *the son*, behaves with piety towards *his* mother'); yet, as the same sense has already been obtained from the former part of the sentence, "on the death of the father, the mother has a claim, &c." father, being the subject of the text, occurs for the answer to the question, 'mothers of whom?' Consequently, the wives of the paternal grandfather are entitled to equal shares with his grandsons; for this corresponds with the text of Vyása (LXXXIV.) Thus, according to Jímútaváhana, Raghunandana, Srí Crĭshna Tercálancára and the rest, when partition is made by a father, a share equal to that of a son must be given to the wife who has no son, not to her who has male issue; her son should be considered as alone entitled to *share in* the partition: this, *they think*, agrees with common sense. But, when partition is made by sons, no share need be allotted to the stepmother, who has no male issue; but food and raiment *must be assigned*, for the late owner of the property was bound to support her. Helávudha and the author of the *Dípacalicá* concur in opinion, that, when partition is made by a father, no share shall be allotted to the wife, who has a son; but the author of the *Dípacalicá* does not hold, that no share shall be allotted to the stepmother, who has no male issue, when partition is made by sons. Chandeswara says, 'when 'partition is made by sons, a share must be allotted to the step-'mother, who has no male issue: the particle "but" (LXXXIV) 'has the sense of also; consequently the wives who have, and 'those who have not, sons, are entitled to shares.' Misra delivers a similar opinion; and 'Sulapáni also remarks, 'the 'wives of the father must receive equal shares,' from the sons of course.

Since it might coincide with the text of Yájnyawalcya, "the mother of sons making a partition after the death of their father shall also take an equal share," it might be questioned, whether the term "wives of the father" (LXXXIV) mean the mother of the sons, expressed in the plural number by way of allusion to marriages contracted in various classes. It could not be said, that "mother" in the text of Yájnyawalcya

signifies

ſignifies both natural mother and ſtepmother. A word cannot be admitted in a primary and ſecondary ſenſe at the ſame time; for it is a rule in philology, that a word, uttered but once, conveys but one meaning. Is it not for the purpoſe of obviating this doubt, that the legiſlator adds, "who have no ſons" (LXXXIV)? And the conſtruction preferred by JÍMÚTAVÁHANA and the reſt, which recites, "partition being made by a father," ſhould be alone admitted. If this be alleged, it is denied; for it is a rule, not to deduce from other texts the explanation of a clear precept; and it would be therefore wrong to remove the term "who have no ſons" from its natural and near connexion in the ſentence, to conſtrue it with the word "wives," *at the ſame time* ſeparating this from the words "of the father." Again; the laſt half of the text of VYÁSA muſt be conſidered as relating to partition among brothers after the death of the father, ſince it contains the term "wives of the grandfather." Conſequently, the firſt hemiſtich relating to partition by a father, and the laſt hemiſtich to partition made by ſons after the death of the father, the text would be carried out of the due path. Mother, in the phraſe "equal to mothers," requiring the ſon for the perſon who makes the diſtribution, and who gives a ſhare to the wife of the grandfather, and his mother's ſhare not being ſpecified in the text, there would be the additional trouble of ſeeking the following text of another Sage: "the mother ſhall take an equal ſhare with her ſons, after the "death of her lord*." Nor is there any thing inconſiſtent with the text of YÁJNYAWALCYA; for in many inſtances† the word "mother" is employed in the ſenſe of ſtepmother. Nor is this conſtruction liable to the objection of a word being uſed in two ſenſes at the ſame time; for the word is accepted in one ſenſe only, 'wife of the father,' a ſecondary ſenſe without abandoning the natural meaning; as in the example, 'preſerve the 'curds from the crows,' *that is, from any animal which might deſtroy them.* SÚLAPÁNI, in the *Dípacalicá*, commenting on the text of YÁJNYAWALCYA, cites the text of VYÁSA as bearing the ſame import. Accordingly, in the text of VRĬHASPATI, "natural

* See a note at page 16.

† An inſtance is given, but I do not recall the remainder of the text, without which the quotation cannot be confidently tranſlated. T.

"natural mother" *(jananì)* is used in the singular number, because she, who bore the son, is individual; and since stepmothers may be numerous, the word "mother" *(mátrĭ)*, denoting the stepmother, is used in the plural number *(mătarah)*: and there "mother" *(mátrĭ)* signifies stepmother only, bearing a figurative sense, wherein the natural meaning is abandoned; and the preceding phrase is added, to remove the doubt whether the natural mother be alone entitled *to a share*, since "mother" *(mátrĭ)* might signify natural mother only; in the same manner as the term "those who have no sons," is added in the text of Vyása. Chandéswara, commenting on the text of Vrĭhaspati, says, "natural mother" *(jananì)* here signifies her who has a son; and mothers *(mătarah)*, wives of the father. Váchespati Misra expounds "on failure of him," on the death of the father (LXXXV); "natural mother" *(jananì)*, she who has a son; "mothers" *(mătarah)*, stepmothers who have no male issue: all these shall have equal shares with the sons; and unmarried sisters shall have each a quarter of their brother's share, to defray the expences of their nuptials. The claim to an equal share with the sons must be considered as a derivative title, arising out of another absolute title, in this mode; whatever would have been their shares had they sons, the same shares shall they receive *if they have no male issue.* Consequently, if a priest have a barren wife of the military class, three shares must be *severally* allotted to the sons of the *Bráhmenì* wife, but two shares to the *Cshatriyá* wife, and so forth. Vishnu, omitting the word "equal," and using the word "proportionate," makes this evident.

## LXXXVI.

Vishnu:—Mothers take shares proportionate to the shares of sons, and so do unmarried daughters.

On this Jímútaváhana has remarked, *that mothers take shares* in proportion to the shares of sons: as the shares allotted to sons are four, three, two, and one, in the direct order of the classes, so are the *same* shares also allotted to wives *of the*

 *same*

*ſame claſſes.* Elſe it would have been ſaid, whatever ſhares are allotted to the ſons, the ſame ſhall be alſo allotted to the wives. By the expreſſion 'the ſhares allotted are four, three, two, and one, in the direct order of the claſſes,' it is intimated, that, as the *Cſhatriyá* ſon of a *Bráhmana* ſhall take three ſhares, ſo ſhall the *Cſhatriyá* wife. However, this text is propounded as applicable to the caſe of partition by a father. The diſtribution of four, three, two, and one, ſhares, will be ſubſequently diſcuſſed.

'And unmarried daughters take ſhares proportionate to thoſe of ſons:' ſuch is the conſtruction of the text. Conſequently, ſince it has the ſame import with the text of VRĬHASPATI, they *each* receive the quarter of a ſhare. By ſaying 'in proportion to the ſhares of the ſons,' it is expreſſed, that a virgin ſhall receive a fourth of ſuch ſhare as would be allotted to a ſon of the ſame claſs with that from which ſhe ſprang.

Again; the annexing of the epithet "childleſs, *or* who have no ſons," is conſidered as groundleſs by the author of the *Dípacalicá*, by HELÁYUDHA and others; but that is not affirmed by VIJNYÁNÉSWARA, CHANDÉSWRA, VÁCHESPATI MISRA, and the reſt. It is, conſequently, their opinion, that when partition is made by a father, even the wife, who has ſons, may claim a ſhare. But ſome think the opinion delivered by the author of the *Dípacalicá* conſiſtent with the reaſon of the law; ſince the particle "but" in the text of VYÁSA is excluſive; therefore, as no ſhare ſhould be given to her, who has male iſſue, when partition is made by ſons, ſo, from parity of reaſoning, *none ſhould be given* when partition is made by the father. It ſhould not be argued, that, according to the opinion of CHANDÉSWARA and the reſt, the words "after the death of her lord," in the text quoted by JÍMÚTAVÁHANA*, and, "if the father be dead" in the text of CÁTYÁYANA are unmeaning, ſince it is directed, that a wife, whether ſhe have, or have not, male iſſue, ſhall take an equal ſhare with the ſons, whether their father

* Expecting the texts to be cited at large in other places, I had here omitted theſe imperfect quotations; but I now ſubjoin them in this note.

Text quoted by JÍMU'TA'VA'HANA: The mother ſhall take an equal ſhare with her ſons, after the death of her lord.

CA'TYA'YANA: And the mother ſhall have an equal ſhare with her ſons, if the father be dead. T.

father be living or deceaſed. If the father be living, greater or leſs ſhares are received, through his choice, in proportion to duty or piety, and the like; but, after his death, equal ſhares alone are received, without attending to the duty and piety of ſons, or the like: and in the caſe of partition by a father, wives are entitled to equal ſhares compared with each other; but in the caſe of partition made by ſons, they are entitled to equal ſhares with the ſons. In this and other circumſtances there is much difference. Conſequently, the variance of theſe two opinions conſiſts herein: according to CHANDÉSWARA and the reſt, whether partition be made by the father or by his ſons, equal ſhares muſt be allotted, conformably with the law, to the wives who have no male iſſue, as well as to thoſe who have ſons; according to JÍMÚTAVÁHANA and the reſt, when partition is made by a father, an equal ſhare muſt be given to the wife who has no male iſſue; and when partition is made by ſons, to the natural mother of thoſe ſons. The queſtion ſhould be examined by the wiſe.

Theſe muſt only be allotted, if no female property have been given; for the remaining hemiſtich expreſſes, "if they have received no wealth," &c. (LXXXIII): *but* if female property have been given, an equal ſhare completed by including that property muſt be allotted, in the manner ordained in the following text of YÁJNYAWALCYA.

## LXXXVII.

YÁJNYAWALCYA:—To a woman, whoſe huſband marries a ſecond wife, muſt be given an equal preſent on that ſecond marriage, *or equal to what the new wife ſhall receive on her nuptials,* if ſhe had herſelf received none of the wealth uſually given to women; but if ſuch wealth had been delivered to her, ſhe is held entitled only to a moiety or part *of the gift at the ſecond wedding.*

By one who deſires a ſecond marriage, an equal preſent muſt be given to ſatisfy the former wife; as much as is ſettled *for the new*

*new wife*, not more nor lefs. But if fhe had already received fuch wealth as is ufually given to women, from her hufband's family (for the text coincides with the preceding), then a moiety, that is, lefs, fhall be given: the equivalent prefent fhall be completed by including the female property received from her *hufband's* family. Since it is a rule, that an expofition of law, affirmed in one cafe, fhall be extended to others, unlefs fome impediment occur; and fince it is neceffary to fatisfy the queftion, what fhould be done when female property has been already given? therefore fhould the fame be eftablifhed in the prefent cafe. Moiety *(ardha)*, in the mafculine gender, fignifies part in general, not equal part or exact half, which is fignified by the fame word in the neuter gender. SRÍ CRĬSHNA TERCÁLANCÁRA fays, 'as much fhould be given to the fuperfeded wife as to the fecond wife.' But VIJNYÁNÉSWARA thinks, the word "equal" fignifies fo much as is expended at the fecond wedding. Both conceive, that whatever has been promifed, which is fit to be given, muft be delivered, provided the promife were not made under the influence of luft, wrath, or the like. The gift of lefs, or of a moiety, is improper; for a text fhows, that a promife legally made in words, but not performed in deed, is a debt of confcience in this world and in the next (Book II. Chap. iv. V. 46 and 44.). This fhould be difcuffed in the chapter on the Property of Women.

"His wives muft have equal fhares" (LXXXIII). Equal fhares with whom? To this queftion JÍMÚTAVÁHANA and RAGHUNANDANA reply, 'equal fhares with the fons.' For JÍMÚTAVÁHANA obferves, 'an equal divifion being made by the father among his fons, all his wives muft have equal fhares.' RAGHUNANDANA fays, 'the legiflator ordains, that, when partition is made by a father, an equal fhare with the fons fhall be allotted to the wife, who has no male iffue.' Their meaning is this: the former text (XXVI) prefenting this fenfe, "the father may divide the eftate among all his fons in equal fhares," *or, in other words*, give one fon an equal fhare with another fon, it is proper in the prefent inftance to affume the conftruction therefrom, fince it readily prefents that allufion. In like manner, when partition is made by fons after the death of the father, a complete fhare muft be allotted to a mother, who has

has already received ſuch property as is uſually given to women, including in that ſhare ſuch ſeveral property; for it is a rule, that an expoſition of law, affirmed in one caſe, ſhall be extended to others, unleſs ſome impediment occur.

Should the father, by his own choice, give equal ſhares to all his ſons, his wives muſt have equal ſhares with his ſons, if they have received no female property either from their lord or from his father; but if ſuch property have been given, a moiety *or other part* of a ſhare will be ordained (LXXXVII). If he allot an excellent ſhare to the eldeſt ſon and ſo forth, his wives ſhall not have ſuch excellent ſhares and the like; but, after ſetting apart the deducted allotments, they ſhall receive equal ſhares together with a deduction, as ordained by APASTAMBA (LXXXVIII). The *Mitáchará.*

But others explain the phraſe, "wives muſt have equal ſhares," 'they muſt have equal ſhares with each other. If female property have been given to one wife, the others muſt alſo have 'equal preſents. Shall equal ſums to that which had been already 'given to one wife, be given to the reſt? or ſhall any additional ſum 'be given to the firſt, and greater ſums to the reſt, *for the purpoſe of 'equaliſing their allotments?* The difference depends on the choice 'of him who makes the diſtribution of property acquired by him'ſelf; and the ſame will be alſo eſtabliſhed in the caſe of property 'inherited from the paternal grandfather. Such is the mode of 'interpretation approved by CHANDÉSWARA, VÁCHESPATI and 'the reſt. But it ſhould be remarked, that, when no ſeveral 'property has been given to any one wife, then wealth muſt be 'given to all the wives, ſo that their ſhares be equal.' They conceive, that "equal ſhares" in this, as in the former text (LXXXIII and XXVI), ſhould be argued to ſignify equal to each other: but the preſent text contains a ſpecial rule, that ſhares, equal to each other, ſhall be allotted, including ſuch wealth as is uſually given to women.

The opinion of JÍMÚTAVÁHANA is accurate; for the ſhares of wives are ordained equal to thoſe of ſons; and when partition is made by ſons, the ſhare of the mother is ſhown equal to that of her ſon. On the other expoſition, an honeſt man finds no certainty what ſums ought to be given to the wives.

"From her lord, or from his father," (LXXXIII): this is a



mere

mere inſtance, comprehending his grandfather, mother and the reſt. The meaning is this: when ſhe has received, from any perſon, wealth, which ſhould *ultimately* have accrued to her huſband, that ſhall be included in completing her allotment; but if ſhe received it from her own father or other relative, or from the maternal uncle or other *collateral* kinſman of her lord, ſuch wealth ſhall not be included in her allotment, becauſe it was excluſive of his claims. Such is the method *of interpretation* conſiſtent with common ſenſe. The completion of a ſhare does not follow from this text of YÁJNYAWALCYA; for he delivers the exception in general terms, "if they have received no "wealth," &c. (LXXXIII): but it follows from the text, which contains the word moiety *(ardha)* in the maſculine gender, *and therefore ſignifying a part in general.* Conſequently YÁJNYAWALCYA excepts from the delivery of a full ſhare, ſuch wives as had already received female property.

MISRA has explained the uſe of the word "when" in this text (LXXXIII); 'but when he reſerves the greater part of 'his fortune, and gives ſome trifle to his ſons, or takes a double 'ſhare for himſelf, the huſband muſt give ſo much wealth to 'his wives out of his own ſhare alone; accordingly the ſeparate delivery *of ſhares to wives* is only ordained when he 'makes an equal partition.' His notion is this: when a father makes an equal partition, his wives muſt have equal ſhares; but when he does not make an equal partition, he need not allot a ſhare to his wife, but *ſhall ſupport her* out of the wealth which he reſerved for himſelf; and equal partition ſignifies the allotment of equal ſhares to his ſons and himſelf. This is liable to objection: for three caſes have been propounded (XXVI), and the alluſion to the laſt caſe would alone be relevant. It ſhould not be affirmed, that equal ſhares allotted to the father and to his ſons are intended: for it is declared, that he may reſerve the greateſt part of what he acquired; and two ſhares of the patrimony inherited from the paternal grandfather will be ordained *for the father who makes a partition.* As for what is ſaid by JÍMÚTAVÁHANA, that the *natural* father of a ſon begotten on an appointed wife ſhares equally with the ſon; that is not contemplated in the text of YAJNYAWALCYA (LXXXIII). Were it ſo, there would be an impropriety in abandoning the principal form

*form* of partition suggested by the general designation, to consider the text as propounding the succession of the father of a son begotten on an appointed wife. Consequently the text only signifies, that all the sons have equal shares with each other: the double or single share of the father follows only from the texts of other Sages. If he give so much wealth out of that which he reserved for himself, does he not give a share to his wife? and, in the case where a double share is received, a father who had many wives would be nearly reduced to indigence.

But CHANDÉSWARA observes, 'when the father allots 'equal shares to his sons, his wives also must have equal shares: 'and this *is true* when the patrimony inherited from the 'paternal grandfather is divided, and marriages were only 'contracted with women equal in class; or when property 'acquired by the father himself is distributed without attention 'to the duty and piety of the sons and so forth. But when the 'patrimony inherited from the paternal grandfather is unequally distributed with due attention to the class of wives, or 'when property acquired by the father himself is unequally 'divided with attention to the duty and piety of sons and so 'forth, wives also shall receive unequal shares in right of their 'class, or in right of duty and piety or the like: and that is 'nearly, but not rigidly, exact; for, if there be five sons born of 'the *Bráhmenì* wife, and there be one *Cshatriyá* wife, and, in 'such a case, if certain sons be unable *to earn a livelihood*, and 'all the wives be dutiful or all undutiful, or, in the same case, if 'the latter circumstances be reversed, then common sense shows 'it proper, *in the one instance*, to allot equal shares to the wife '*of the same class*, and to wives *different in class*, while the sons 'have not equal shares, or, *in the other instance*, to allot unequal 'shares to the wives, while the sons have equal shares.'

An observation should be here made: if the father divide the estate among his sons in equal shares, (*or, in other words*, if he take one or two shares for himself, and give similar allotments to his sons,) or give greater portions in right of transcendant virtue as the law directs, he must allot one share to each of his wives out of his own ascertained wealth; but if he reserve the greatest part of an estate acquired by himself, he must defray the nuptials of his daughter, and support his wife out of his own wealth,

 *which*

*which he reserved*: he ought to retain a sufficient sum for those purposes. Such is the method indicated by VÁCHESPATI MISRA.

The word 'wife' *(patní)* in this gloss [of CHANDÉSWARA] denotes the eldest wife; for it is so employed: eldest wife means her who is equal in class. No author has used the term to denote wife in general, *or of any class*. However, since the espousal of a wife unequal in class is prohibited in the *Cali* age, the case does not now occur. I have not mentioned the subject of my own accord; but every subject which has been treated by Sages and Authors, is briefly discussed in a few places, for the purpose of expounding their texts, and elucidating their works.

Whether the share be equal with that of the son, or with that of another wife, are wives entitled to the use only of the share which they receive, or have they independent power over it? To this question some lawyers reply: although sons had no previous ownership in their father's estate, yet, as they have independent power *after partition*, since the *father's* property is devested, so wives also have independent power; for a text declares, that property is common to the husband and wife (CCCCXV), and she therefore had ownership even prior to this partition: and, that being the case, her gift of such property is valid, even without the assent of her lord; and when she dies, it devolves on her own son alone, not on a son born of another wife. Under the text which ordains the dependence of women (Book IV, v. 5), and that which declares property common to the husband and wife, is not a wife owner of such wealth, and at the same time dependent in respect of it; and accordingly she has then no power to give or sell her own due share? It should not be affirmed, that, since partition between husband and wife is not admitted, there cannot be any due share belonging to her. In the case of partition during the life of the father, this text propounds the shares of the husband and of the wife; and the term 'partition' denotes several property predicated of one person alone. If it be affirmed, that, since an allotment of wealth to the wife is directed then only when partition is made on account of the sons, and since partition between a childless husband and his wife has not been propounded, she can have no claim to partition; but, a distribution among sons being undertaken, a maintenance alone is assigned to the wife, from the

I apprehension,

apprehension, "should all the property be dissipated, where and how could my wives be supported?" And the amount of that alimony is fixed at a sum equal to the share of sons and of other wives: *if this be affirmed*, then surely she has no power to give away, or otherwise aliene, her alimony; her husband is sole master of her and of her wealth, whether residing at the same or at a different place; and when she dies, the wealth assigned for her support reverts to her husband, or to his heir: her right is now, *after the assignment of alimony*, the same as before, in respect of expending wealth with her lord's consent, or keeping it, and so forth. When this *question and inference* is proposed, *the answer is*, No; for, the dominion of the wife over the whole wealth of her husband being shown by the terms of the text (CCCCXV), and her separate property, unconnected with her husband, being similarly proved after partition, nothing prevents the validity of her gift, *or alienation* of this wealth, any more than *her gift* of her own separate property; and there is no argument to prove that the text of YÁJNYAWALCYA, which propounds partition, intends the assignment of a maintenance. Were it so, why should it not be equally true in respect of sons? Her dependence serves to impede the attainment of religious merit, by the distribution of alms, and by abstinence or the like, undertaken without the assent of her lord; and to prevent her intercourse with other men, and rambling abroad at her pleasure.

Such being the case, would her daughter succeed to such wealth on her death, if she leave no male issue, although a son born of another wife be living? No; for the text (CCCCLXXVII 2) may relate solely to property received by the wife in right of her connexion *by marriage*, as easily as it may relate to the property of the husband, in which the wife has an interest; since there is no argument, on which one meaning should be selected in preference to the other, and the right of the husband's heirs has been alone propounded. Again; the equal title of her own son, and of one born of another wife, is admitted. It should not be objected, that, such being the case, the succession to female property might accrue to them on the same grounds. In respect of such wealth as is usually given to women, a property is created, originating in gift alone; and, in this case, a property originating in a gift on account of

 affinity,

affinity, and resisting the paramount dominion of the husband, is created, not property derived from affinity alone. Nor should it be argued that the text quoted (CCCCLXXVII 2) concerns only the succession to the estate of one who leaves no son. There is no argument, on which such an interpretation can be established: although it be inserted under the title of Property left by one who has no Son, still that interpretation is opposed by proofs drawn from analogy. Nor should it be objected, that, since the share of a wife is in a manner *gratuitously* given, it ought to be held similar to female property. Being received in right of *the* relation *of a wife to her husband*, it is justly considered as similar to connected property, *or wealth devolving on heirs in right of affinity*. Since a wife has an interest in the whole of her husband's estate, the father's wife, whether she have, or have not, male issue, is entitled *to an allotment*, when partition among sons is undertaken after the death of her lord. Accordingly CHANDÉSWARA and the rest hold, that shares must be allotted to them: and hence, the text, "after the death of the father and mother, &c." (IV), showing that sons do not completely succeed to the estate while the mother lives, declares them unentitled to *make* a partition *without her consent*. Were it so, since the husband would not be qualified to make a partition without the assent of his wife, would it not follow that no partition could be then made by a father? No; for the right of the wife, originating in the right of the husband, is subordinate thereto. Accordingly, when the patrimony left by the paternal grandfather is divided, the allotment of a share to the wives of that ancestor is ordained. Modern lawyers hold, that shares must in that case be allotted even to those wives of the paternal grandfather who have no sons. When property left by the paternal great grandfather is divided, should not a share be allotted to his wife? That is admissible from parity of reasoning; and the particle in the phrase, "and wives of the grandfather" (LXXXIV) connects the terms with what is *understood*, *but* not expressed. As for what is deduced from the law, that no share should be allotted to the wife unless partition be made among sons, it is founded on the independent authority of scripture, *that is*, *on the letter of the law*; else, according to your opinion, since there is no distinction in their want of ownership, the reason

reaſon of the law muſt be ſhewn for this maxim, 'that partition ſhall be made on account of the ſon, not on account of the wife.' Let it not be objected, that the authority of ſcripture ſhould be acknowledged *as the foundation of civil law* in every caſe. When the reaſon of the law is *apparent*, it would be wrong to abandon it. Accordingly YAJNYAWALCYA declares, "if two texts of law differ, reaſon, *or that which reaſon beſt ſupports*, muſt in practice prevail." As for what is argued, that, when the huſband's property is deveſted, the property of the wife, originating therein, is alſo annulled: here are no grounds for this induction; for there is no ordinance to that effect, like the text (CCCCXV), which ſerves to prove the right of the wife to be co-exiſtent with the huſband's; and property is not deveſted, when the act which created it is paſt; elſe, the property of the donee would be annulled ſo ſoon as the acts of giving and accepting were paſt. In like manner, a thing given, at the time of partition, to a wife, a mother, a grandmother, and a great grandmother, cannot be aliened or ſold by the huſband and the reſt; but the gift or other alienation by the wife or owner is valid.

Such is the anſwer given by ſome lawyers to the queſtion propoſed: and that is not unacknowledged by BHAVADÉVA. He ſays, 'in fact wives have an intereſt in their huſband's eſtate, 'under the text which declares property common to huſband 'and wife; and by the authority of texts, if there be a ſon, a 'ſon's ſon, or a great grandſon, ſince theſe offer the double and 'ſingle ſets of funeral cakes, a ſhare muſt be allotted to them, 'as *having* equal *pretenſions* with the mother; but, on failure of 'them, wives alone ſucceed to the whole eſtate: this muſt be 'admitted by the wiſe.' Although the mother ſurvive, the ſon has property in the paternal eſtate after the demiſe of his father, of whom the principal right was predicated; and the mother's right, which is ſubordinate, neither reſiſts nor is reſiſted by any other. Accordingly, though the firſt wife have property *in her huſband's eſtate*, another, *ſubſequently* married, has alſo property *in the ſame*. The author of the *Mitácſhara* likewiſe admits the ownerſhip of the wife in the whole of her huſband's eſtate; and he therefore admits partition with the wife, ſo that it be made by the choice of her huſband, not by her own. He has not ſaid, that a maintenance only ſhall be aſſigned to her. However,

ever, he has directed that a deducted allotment ſhall be alſo given, as ordained by the text of APASTAMBA.

## LXXXVIII.

APASTAMBA:—The furniture, the houſe, and the ornaments ſhall be allotted to the wife.

Hence the gift, ſale, or other alienation of her own ſhare, by a wife, is valid. However, ſince women are not independent, that gift is immoral. This opinion is ſo proved. But to that VÁCHESPATI BHATTÁCHÁRYA does not concede; becauſe the aſſertion, that a ſhare is given to wives, mothers, and the reſt, in right of a property *already veſted*, is not accurate. For, were it ſo, a ſhare of property, inherited from remote anceſtors, muſt be given to the grandfather's grandmother and the reſt. Or, even granting that a ſhare muſt be given to thoſe matrons, if they have not already received any allotment, then, ſhould a childleſs *Bráhmana* leave a *Vaiśyá* wife, ſhe would alſo receive a ſhare when partition is made among his uterine kindred, who are alone entitled to the ſucceſſion: and, were it ſo, a new practice, not approved by any author, would be introduced. As it is admitted that the natural mother of an only ſon ſhall receive no ſhare, ſince it has not been ordained by the text of any Sage, ſo it is reaſonable that no ſhare ſhould be allotted to a great grandmother. As for what is affirmed, that a wife has a ſecondary claim on the whole of her huſband's eſtate under the text which declares property common to huſband and wife; be it as it may, according to the opinion of thoſe who contend for her ſeveral property, ſtill partition is not made in right of that property, but partition between huſband and wife muſt be reconciled like that between father and ſon. When partition is made among ſons, a ſhare is allotted to the mother, for the ſake of natural affection, to eſtabliſh the validity of the ſon's ſhare, and for the ſake of independence: if the ſhare allotted to a wife or mother be conſumed in her ſupport, ſhe is entitled to receive alimony from her huſband or ſon; for, at all events, ſhe muſt be maintained: but if a ſurplus remain above the conſumption, and the huſband's wealth be wholly diſſipated, he may, by parity of reaſoning, reſume property from

from his wife, as *he might resume it* from his son. However, the share allotted to a wife and the rest, like that which is given to a son, may be disposed of at their pleasure. Hence, like female property, the gift, sale, or other alienation of that share is valid; for it is equally given her by her husband and the rest. Such is the just rule of decision according to both opinions. However, there is no reasoning which can show it incumbent on great grandsons, and the rest, to allot a share to their great grandmother. Consequently, when partition is made by a father, he must give to such of his wives as have no male issue an equal share with his sons; and when partition is made among sons or grandsons, they must allot to their natural mother or grandmother an equal share with themselves; but if female property have been given to any one wife by a kinsman sprung from the same race with her husband, that shall be included in completing her share. No allotment shall be given to a great grandmother. Such is the opinion of JÍMÚTAVAHANA and the rest. But 'SRÍ CRĬSHNA TERCÁLANCÁRA holds, that a share must be also given to the father's stepmother. To establish this opinion, the reason of the law ought to be shown. It cannot be affirmed that the argument may be drawn from the word "all" (LXXXIV), which would otherwise be nugatory. That the word "father" would thus become unmeaning, *or would want precision*, cannot well be disproved. As for what he asserts, that the wife of the grandfather claims a share of the grandfather's estate only, still we perceive no other reasoning by which this maxim can be maintained, except a title founded on her secondary property in the grandfather's estate. That author does not admit the validity of gift, sale, or other alienation by a wife and the rest. This brief exposition may suffice.

CHANDÉSWARA and the rest differ, *contending*, that shares must be allotted to all the wives and the rest, whether they have, or have not, sons. But others hold, that the allotment of shares to wives, as directed by YÁJNYAWALCYA, is not intended for partition between husband and wife; since 'APASTAMBA forbids such a partition.

## LXXXIX.

'APASTAMBA:—*a* Partition does not take place be-

tween

tween a wife and her lord. β. From the *time of* taking her hand in marriage, her aid in *all* acts is required as well as her participation in the pure and impure fruit *of action,* and *her concurrence* in the receipt of wealth: Sages do not deem it a theft, if a gift be made by a wife for a *just* cause, during the *absence* of her husband*.

It relates not to partition between husband and wife, for it would contradict common sense, that, living at different places, upon separate property, they should co-operate in religious rites; and *again*, because 'APASTAMBA shows them to be associated in the acquisition of wealth; and *lastly*, because partition cannot be effected between them, since the wife's claim on property acquired by her husband after partition could not be barred. The wife shall not daily receive a share *of the daily gain;* nor can she, after separation, have immediate power over her husband's wealth; nor can the text, which declares property common to husband and wife, be silent from the day when partition is made. Therefore, when the paternal estate is equally divided, should it be impracticable to support his wives out of his own share alone, the husband may take a share for each of his wives, and live in one abode with his wives thus enriched: their partition only takes place with his sons. Accordingly, the expression of JÍMÚTAVÁHANA, 'for the want of partition is incidentally mentioned, 'like the want of partition between husband and wife,' is censurable. On the interpretation of JÍMÚTAVÁHANA and the rest, is not this inconsistent with the expression "when the father "makes an equal partition" (LXXXIII); for a father receives two shares of the wealth inherited from the grandfather? No; for equal shares denotes equality with each other: and the quantity, not the number, of the shares, has been thereby restricted. Consequently the equality of *each of* the father's two shares with those of the brethren is propounded. According to the opinion of

* Partially cited in this place. I complete the text from subsequent quotations compared with other Digests. T.

of those who contend for the equal dominion of both father and ſon *over property of every kind*, is not the text, which will be cited (XCII), nugatory? *No;* for that text only intimates the ownerſhip of both; the preſent text (LXXXIII) implies partition. Reaſoning, *ſay theſe lawyers*, which contradicts numerous authors, and ſets at variance the texts propounded by Sages, is a modern mode *of expoſition*.

If a man leave two wives, and by one two ſons, and by the other four, partition ſhall be made, as above-mentioned, among the brothers of the whole and half-blood; but what ſhares ſhould be allotted to their reſpective mothers? To this CHANDÉSWARA and the reſt would reply, the eſtate muſt be divided into eight ſhares, and two muſt be given to the mothers, for they are equally wives of the father; (but if any widow belong to a different claſs *from her late huſband*, ſhe ſhall receive her portion according to the ſhare which is allotted to her own ſon, or which would have been allotted to him had ſhe had one;) the ſix brothers take ſix ſhares. But the author of the *Dípacalicā* ſeems to think that no ſhare ſhall be allotted to the mother, who has ſons living; for he cites the text of VYÁSA, premiſing theſe words, 'the ſage 'propounds a ſpecial rule.' However, SRÍ CRĬSHNA TERCALANCÁRA obſerves in his commentary on the work of JÍMÚTAVÁHANA, 'both are not entitled to ſhares, ſince both are not 'natural mothers of all the ſons; and the natural mother, ac'cording to JÍMÚTAVÁHANA and the reſt, is alone entitled to a 'ſhare.' On this it ſhould be remarked, that a queſtion remains, whether one wife of the late proprietor ſhall receive a ſhare becauſe ſhe is natural mother of him who makes the diſtribution, or whether ſhe ſhall receive no ſhare becauſe ſhe is not the natural mother of a certain *other* ſon. According to JÍMÚTAVÁHANA and the reſt, "ſon," in the text which will be cited *, ſignifying born of her womb, it is a ſettled rule, that a widow ſhall receive from ſons, who were born of her, an equal ſhare with them, and ſhe cannot receive a ſhare from the children of another wife; therefore, ſhe can only receive her ſhare from her own ſons. Let it not be objected, that, were it ſo, the ſhare of the one might be leſs

* The compiler has omitted the text in its proper place. See a verſion of it in a note preceding V. 87. T.

lefs than that of another brother. When partition is made, the fhare allotted to the mother may be formed by two operations: one fhare may be affigned to the fon, and again a part of that fhare to the mother; for equal partition can be effected by this method. For example, in the cafe propofed, if the eftate amount to twenty-feven thoufand *fuvernas*, a fhare amounting to four thoufand five hundred *fuvernas* being allotted to the fon of her who has borne two fons, three thoufand *fuvernas* are fet apart on one fide, and one thoufand five hundred *fuvernas* on the other fide. In that cafe the two parts of fhares are *equal to* the allotment due to one *fon;* the fame is alfo true of the other: and the two parts become the fhare of the mother. The difficulty may be thus reconciled *.

If the fon refufe to deliver the fhare of his natural mother, fhe may exact it even by forcible means; for the ordinance would be otherwife nugatory; the term "equal fhare" would be unmeaning; and the word "equal" ufed in a pofitive fenfe, would be futile. This inference ftands uncontradicted by any author. But, at prefent, folely through the tendernefs of the mother, fuch a practice does not occur.

Some lawyers hold, that when partition is made during the life of the father, he fhall give an equal fhare to his wives, whether they have, or have not, fons: and that fhare is *merely* allotted for their maintenance; fince partition between hufband and wife is forbidden, and the text, which declares property common to the married pair, renders vain a partition which has even actually taken place. Again; when partition is made among grandfons, an equal fhare with themfelves muft be allotted by them to their father's wife, who has no male iffue, and to the wife of their grandfather; not to her who has male iffue, for the text of VYÁSA expreffes, "but the wives of the father, who have no fons," &c. (LXXXIV). Their natural mother, moft venerable, having borne them from her own body, muft be honoured with all their wealth, and with every exertion of labour. And this is reafonable: fince wives muft have property while their hufband lives, becaufe they are affociated with him, fhares muft

* The author would have found the example erroneous, had he purfued his proof; for he cannot fo diftribute the remainder among the four fons and their mother. T.

must be allotted by an aged father for the ſupport of his wives; but if he reſerve for himſelf as much wealth as he pleaſes, there is no occaſion for ſuch an allotment of ſhares. When partition is made after the father's demiſe, ſince a mother has a claim on the whole of her ſon's property, ſhe may be ſupported out of his own ſhare: but unleſs the ſtepmother, who has no ſon, receive a ſhare, ſhe might have no ſubſiſtence but what ſhe obtained in alms. However, the duty of reverence towards mothers is ill fulfilled by the perverſe people of the preſent day; for this cauſe, they are ſometimes compelled by virtuous men to allot ſome wealth as a fixed ſhare. In that caſe, a gift made on temporal conſiderations, for a worldly purpoſe, by a wife or widow, and a ſale or other alienation for her own pleaſure, are not valid: but it is fit ſhe ſhould have power to give, ſell, or otherwiſe aliene her allotment, for her own ſupport, or for religious uſes; ſince it was delivered to her for thoſe very purpoſes.

But when the father of an only ſon leaves one wife, then food and veſture only ſhall of courſe be allotted to her, ſince no text propounds the immediate appropriation of a ſhare; and the law has only ordained the allotment of a ſhare to the mother or ſtepmother, when partition is made among ſons. Again; when a diſtribution is made by a father, if his own mother be living, no ſhare is ordained for her; ſince the law has only ordained the allotment of a ſhare to the mother, when partition is made by ſons with each other. It ſhould not be argued, that *her participation* may be deduced from the law which ordains the allotment of a ſhare to a grandmother, in the caſe of partition among grandſons. This is not partition made by her grandſons, but by her ſon; it is, therefore, a diſtribution *made* by her own ſon. According to the opinion of thoſe who contend for the equal dominion of father and ſon over property inherited from the grandfather, there is this difference, that a ſhare muſt be allotted to the grandmother, ſince partition by the choice of the ſon is admitted. When partition of property, which he himſelf acquired, is made by a father, the ſhare of his wife and the reſt ſeems to be incidentally diſcuſſed. A father may divide, at his pleaſure, property which he himſelf acquired, *giving more to ſome and leſs to others;* or he may give the firſt-born the portion of an eldeſt ſon; or make all the ſhares equal: theſe three caſes are conſidered in the

the *Retnácara* as *solely* relating to partition during the life of the father. The text which concerns property inherited from the grandfather, shall be subsequently cited. This appears to be implied.

But some consider the first case *only* as relating to property acquired by the father; for all the cases cannot be regulated by his sole pleasure. Under this case is propounded the reservation of the greatest part of his fortune, and the unequal distribution among sons in consideration of duty or piety, and the like. Under the second case *is propounded* the allotment of an additional portion to the eldest son. The third case relates to sons equally dutiful and the like, and to property inherited from the grandfather.

What is meant by "property which the father himself acquired?" That which the father has acquired, by the acceptance of presents, by the use of arms, by agriculture or commerce, by service or gaming, without employing property left by his own father: this is signified by the term. VRĬHASPATI propounds another kind of property acquired by a man himself.

## XC.

VRĬHASPATI:—Over property descending from the grandfather, but seized *by strangers*, which the father recovers by his own power, and over what he has gained by science, valour, or the like, the father has full dominion;

2. He may give it away at his pleasure, or withhold it from partition: but after his death, his sons are pronounced entitled to equal shares.

"By strangers" must be supplied. Through inability, it was not recovered by the grandfather.

MISRA and CHANDÉSWARA.

And it has been gained or recovered by the father, through his own ability. The father has full dominion over such property, and

and over that which he has gained by ſcience, valour, or the like. According to the interpretation of CHANDÉSWARA and the reſt, the expreſſion, ‘ if it were gained on the adventure of property ‘ left by his father, it is treated as property deſcended from the ‘ grandfather,’ is truly pertinent; and, according to this interpretation, the term “ by his own power ” muſt be conſidered as certain and poſitive. MIŚRA accordingly adds, ‘ provided it ‘ were acquired without adventuring wealth which had de‘ ſcended from the grandfather.’

It is ſaid, “ the father has full dominion:” Has he no dominion over property which had deſcended from the grandfather, and has not been ſeized by ſtrangers; or has he dominion but in conjunction with ſome other perſon? To ſolve this queſtion, the legiſlator ſubjoins *the ſecond verſe* (XC 2). Conſequently, at his ſole pleaſure, he may exclude from participation one who behaves diſobediently or the like, and give a greater ſhare in conſideration of filial piety or the like: partition is made at a time regulated by his pleaſure; and he may reſerve the greateſt part for himſelf, when property deſcending from the grandfather, but ſeized by a ſtranger, is recovered by him. But, in the caſe of property left by the grandfather, and not ſeized by a ſtranger, the father is governed by rules of law. Such is the opinion of JÍMÚTAVÁHANA and the reſt. But, according to VIJNYÁNÉSWARA and others, the father and ſon have equal dominion over property inherited from the grandfather, and which has not been ſeized by a ſtranger; but the father alone has dominion over that which had been ſeized by a ſtranger and is recovered by him. “ After his death, &c.” (XC 2); this concerns partition among brothers after the death of their father, the portion of an eldeſt ſon not being *deducted* as above-mentioned.

## XCI.

MENU and VISHNU:—And if a father, by his own efforts, recover *a debt or property unjuſtly detained*, which could not be recovered before *by his father*, he ſhall not, unleſs by his free will, put it

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into parcenary with his ſons, ſince in fact it was acquired by himſelf *.

From the phraſe, "which could not be recovered before," it follows, that it had been ſeized, *or was unjuſtly detained*, by ſtrangers. Property of his father, ſo circumſtanced, which the father recovers, is in fact acquired by himſelf; he ſhall not, unleſs by his own free will, divide it with his ſons. If his own pleaſure be conſulted in reſpect of property acquired by himſelf, is not the rule different in reſpect of property inherited from anceſtors? YÁJNYAWALCYA declares that rule.

## XCII.

YÁJNYAWALCYA:—Over land acquired by the grandfather, over a corrody *out of mines or the like, ſettled on him and his heirs by the king*, and over ſlaves employed in his huſbandry, (or over gold and the like, *for the word* dravya *is expounded variouſly*,) the father and the ſon, *when the grandfather dies*, have equal dominion †.

"A corrody;" a fixed penſion receivable out of mines or the like, and ſettled *on him and his heirs* by the king or other benefactor. "Wealth" *(dravya)*, gold or the like. Over theſe, namely over land and the reſt, the father and ſon have equal dominion. Partition is made even by the choice of the ſon; and the ſhares are equal, as declared by VRĬHASPATI.

The *Dípacalicá*.

## XCIII.

VRĬHASPATI:—Of property acquired by the grandfather, whether moveable or immoveable, equal ſhares are ordained for the father and the ſon.

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* MENU, Ch. ix, V. 209. From the context, it has been there tranſlated differently: the preſent verſion is more literal. T.

† Book II, Chap. iv, V. 31.

The commentator considers "moveable" as here signifying any thing not immoveable, as gold or the like. In expounding the text of YÁJNYAWALCYA (XCII) the *Retnácara* has this gloss; 'that which is fixed or made fast *(nibadhyaté)*, is a corrody *(nibandha)*, or fixed pension receivable out of mines or the like. "Equal dominion:" in this case no greater share is allotted to one than to another; nor can the father give away such property at his pleasure.'

## XCIV.

VYÁSA:—A father and his sons shall have equal shares of a house or of land which had descended from ancestors; but, against their father's will, sons cannot claim a partition of wealth acquired by their father.

"A house or land" is a mere instance, as appears from the term "paternal," which denotes wealth acquired by the father himself. It is intimated, that, even against the father's will, partition of property inherited from the grandfather may be claimed. What will or choice is meant shall be explained in discussing the opinion of JÍMÚTAVÁHANA and the rest. Consequently, the opinion delivered by the author of the *Dípacalicá* is correct, that 'partition of land, and gold, or the like, inherited from ancestors, may take place by the choice of the son; and the father and son have an equal right to one share each.' In the text cited by JÍMÚTAVÁHANA, (Book II, Chap. iv, V. 13.) the words "neither the father," which occur in the last part of the text, bear allusion to property acquired by the father himself; "nor the grandfather" is a mere instance of any ancestor, the great grandfather and the rest. It should not be alleged, that the words "nor the grandfather" are nugatory; since he or any remoter ancestor is father of his own son. Should a dispute arise between grandsons and one who affirms, "this landed property was given to me by their grandfather," the text is intended to show the invalidity of such gift. Thus some expound the law. Others argue, since the donation will be subsequently declared valid *though im-*

*moral*, the phrase must be otherwise expounded, in this mode: since the grandfather has an interest in that which is acquired during his life by his son, (Book II. Chap. iv. V. 56.) and his power of aliening it might be supposed, therefore is this text propounded concerning property acquired by the father. Others again argue, that, as a man is controlled by his son in respect of immoveable property, so is he also controlled by his grandson and the rest: to intimate this, it is said, "nor the grandfather." Consequently, according to this opinion, a father is not independent in respect of precious stones, pearls, or the like, inherited from the grandfather, nor in respect of immoveable property acquired by himself. Accordingly the text quoted in a former book (Book II, Chap. iv. V. 14.) is truly apposite; and the text cited by RAGHUNANDANA (XCV) is also pertinent.

## XCV.

*Uncertain*:—By their father's indulgence sons consume vesture and ornaments, but let not immoveable wealth be consumed even though the father be indulgent.

According to this opinion, does the text now cited relate to property belonging to the grandfather, or to that which belongs to the father? The first *supposition* is not *right*; for the father is not independent in respect of vesture and ornaments appertaining to the grandfather. The second *supposition* is not *right*; for the practice of good men also shows validity in the alienation of property belonging to the grandfather, through *his* indulgence. To this it is answered: dominion over the father's estate during his life is not propounded, by declaring the equal dominion of father and son over property inherited from the grandfather; for that inference has been already disproved. But the father alone has absolute property; and equal dominion is affirmed to show that no unequal partition can be made in this case. Consequently, a gift made by the owner is valid, for he is not insane nor otherwise incapacitated. In like manner, by declaring that "the father has no power" &c. (XXVIII), he is prevented from

from making an unequal division without a sufficient cause. Again; donation and sale are forbidden, to show the immorality of the act, not to annul the gift or alienation: and that is evident on the exposition of JÍMÚTAVÁHANA and the rest. The gift of vesture and ornaments, through indulgence, is not forbidden.

Or vesture worn on the body may be compared to ornaments worn by a wife during her husband's life (CCCCLXXIII): such vesture and ornaments, used though not *expressly* given, belong to the wearer. The father infringes no prohibition; for he has not aliened them. But the dissipation of immoveable property is not legal. That is declared by the text (XCV). Consequently this text relates both to the property of the father and to that of the grandfather.

Since a householder is not his own master in respect of what has descended from an ancestor, as declared in the text cited by RAGHUNANDANA and others (Book II, Chap. iv. V. xv, 3.); and since NÁREDA pronounces void a gift made by one who is not his own master (Book II, Chap. iv. V. liii, 2); the gift of property, which had descended from an ancestor, being made by the father even through indulgence, should not be valid. As for what is said, that gift and sale are forbidden, to show the immorality of the act, not to annul the alienation, that is incorrect; for the invalidity of the gift is intimated even by the phrase "let not immoveable wealth be consumed." It cannot be a practical truth, that a man may not consume that of which his gift would be valid; and there is no argument by which it can be established to be a moral truth: neither, *on the other hand*, is it inconsistent with common sense. The seeming difficulty is thus removed. As for the second case, the text cited (Book II, Chap. iv. V. xv, 3.) has been otherwise expounded in the chapter on Subtraction of Gift: and if any father, infringing the law, absolutely give away the whole or part of the immoveable property acquired by himself, or inherited from his own father, that gift is valid, provided he be not impelled by lust, *or* wrath, *nor act with* guile, or the like. However, he commits the moral offence of violating the law. More on this subject shall be subsequently delivered with the opinion of JÍMÚTAVÁHANA and the rest. Accordingly it is recorded in the *Purānas*

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and other works, (and instances of the practice sometimes occur in certain countries,) that a king has bestowed his *whole* kingdom on a son pre-eminent in virtue, or senior by birth.

The father of an only son shall reserve two shares under the rule of SANC'HA and LIC'HITA (XLIV). The text of NÁREDA (XCVI), and that of VRĬHASPATI (XCVII), concern this very case. Thus far has been detailed the exposition delivered in the *Dípacalicá* and other works. *We* next *proceed to* the opinion of JÍMÚTAVÁHANA and the rest.

By declaring the equal dominion of father and son over property inherited from a grandfather, it is intimated, that, when one son deceased in the lifetime of his father, who is since dead, the grandsons shall take their own father's equal share when partition is made; the whole shall not be taken by sons alone, in right of proximity, nor because they give two funeral cakes, which the last possessor was also bound to offer, *namely to his father and grandfather, whereas his grandsons only offer a funeral cake to his father.* "Grandfather" is in this place an instance merely which comprehends the great grandfather, and "father" comprehends the grandfather. The text is interpreted verbally according to the literal sense, and figuratively according to the secondary sense: and this is suggested by the coincidence of the text of CÁTYÁYANA (LXXIX). Or the interpretation, proposed by D'HARÉSWARA, may be admitted, as follows: in the case of property acquired by the father himself, unequal distribution in consideration of filial piety or the like is not immoral; but, in the case of property inherited from the grandfather, it is immoral: should an unequal distribution of property inherited from the grandfather be nevertheless made, a second partition cannot be *required*, but the father is guilty of a moral offence; as is intimated by JÍMÚTAVÁHANA *in these words*, 'unequal distribution made by a father is only lawful, *morally considered*, in respect of property acquired by himself.' Consequently, since the father has full power over wealth which he himself acquired, his unequal distribution of it is lawful; but, in respect of property inherited from the grandfather, that *unequal distribution, morally considered*, is unlawful. This appears to be his meaning. Since texts which propound a control in regard to property inherited from the grandfather, seem to intend generally moveable

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as well as immoveable property, YAJNYAWALCYA (XCII) delivers a ſpecial rule to obviate that concluſion. Conſequently, ſince the father has full power over precious ſtones, pearls and the like, even though inherited from the grandfather, there is no objection to his unequal diſtribution of ſuch property: it is only forbidden in the caſe of land and the like: and the word "wealth" *(dravya)* here ſignifies bipeds, as ſlaves and the reſt, for they are attached to the glebe, *being employed in the huſbandry*; and ſlaves, as well as immoveable property (ſuch as land and the like), are mentioned in a text above cited (Book II, Chap. iv. V. 14.). Such is the expoſition of RAGHUNANDANA. In the text of VYÁSA likewiſe (XCIV), the terms "a houſe or land" comprehend a corrody, and ſlaves as well as immoveable property; and the term "moveable" in the text of VRĬHASPATI (XCIII) intends ſlaves only: this is made evident by another text (Book II, Chap. iv. V. 13.). Since the word "grandfather" occurs in the text; this, *ſays* JÍMÚTAVÁHANA, relates to his property: and, as appears from the word "whole" repeated in that text, the gift of all the precious ſtones, pearls, and the like, inherited from the grandfather, is not immoral, but a gift of the whole immoveable property is an offence. Even though the immoveable property be acquired by the man himſelf, it is proper to affirm, that the gift or other alienation of it is immoral (Book II, Chap. iv. V. 14.). Then, what difference is there between immoveable property acquired by the father, and that which is inherited from the grandfather? The difference conſiſts in the legality or illegality of unequal diſtribution in conſideration of filial piety and the like. But if the whole immoveable property be given away, the conſequent diſtreſs of the family, through want of ſubſiſtence, is the ſole cauſe of moral guilt: the gift or alienation is not annulled; for it is made by an owner, who is neither inſane, nor otherwiſe incapacitated. MENU inculcates the neceſſity of ſupporting the family (Book II, Ch. iv. V. 11.).

Some incidental obſervations may be added. Two texts cited by JÍMÚTAVÁHANA (Book II, Ch. ii. V. 6. and Ch. iv. V. 18, 5.) are alſo intended to ſhow the immorality of the act, not to annul the ſale or other alienation; for each parcener has an uncertain intereſt in the whole. The ſenſe of the text

explains the cause; since one parcener has not competent power, therefore he ought not to sell or give away immoveable property, which the family hold in coparcenary: accordingly heirs have a lien equally on the immoveable heritage, whether they be divided or undivided; that is, one has not a greater or less lien than another. "Divided" supposes the case where any part of the immoveable heritage remains in common. But, on this interpretation, we do not determine for what purpose the word "immoveable" is added. The opinion is liable to this objection; according to JÍMÚTAVÁHANA, who contends for dispersed property vesting severally in the coparceners, there is no difficulty in not establishing that a declaration in the subjoined form does not devest property; "let this, whether it belong to another or to "me, become the property of DÉVADATTA." But that has been asserted, because NÁREDA, under the title of Subtraction of Gift, not noticing joint property among things deemed ungiven, enumerates it among those which may not be given. Hence, whether it be common to the parceners (the several property being yet unascertained by partition), or be the several property of one, the gift or other alienation of effects, made by one heir without the assent of the rest, does annul his right; but with their assent, it transfers the property of all the coheirs. In this case, all partake of the merit *of the gift*, or share the price *of the sale*, and so forth; but, when aliened without their consent, he, who alienes it, alone incurs the moral guilt, but all partake of the loss. This is a demonstrated rule. However, if he give away that which ought not to be given, common sense shows that he shall be punished.

RAGHUNANDANA observes, 'the text cited (XCV) relates 'to property which had descended from the grandfather: that 'only which has been acquired by the father himself, and is given 'by him, may be consumed; else another foundation of law, 'besides scripture, must be sought.' What text of scripture can be now produced as the foundation of these laws? It should not be affirmed, that the scripture, on which the text (Book II, Ch. iv, V. 13, last hemistich) is founded, may run thus; "aliene not the immoveable property of a grandfather." A text of scripture, which prohibits the alienation of immoveable property acquired by a man himself, must also be sought for the ground of another

another text (Book II, Chapter iv, V. 14.); and it cannot have the ſame import with that which forbids the alienation of the immoveable patrimony, by ſhowing the gift to be invalid through the medium of forbidding the conſumption of the immoveable wealth (XCV). To this it is anſwered, RAGHUNANDANA conſiders this text as relating to partition of heritage, ſince that ſubject is diſcuſſed in his work both before and after the quotation of the text. Conſequently, immoveable wealth inherited from the grandfather, and given or *unequally* divided through the indulgence of the father, or through his favour, in conſideration of filial piety, of a large family to maintain, or of inability to earn a livelihood, ſhall not be conſumed nor enjoyed *as ſo diſtributed;* for this coincides with the text which declares the equal dominion of father and ſon. But precious ſtones, or the like, inherited from the grandfather, and ſo diſtributed, may be *ſo* enjoyed; for that coincides with another text (Book II, Chap. iv, V. 13.). But ſome think it reaſonable to infer from the text (XCV), that a valid gift, ſale, or other alienation at the pleaſure of the father, is only unobſtructed in the caſe of property different from the immoveables inherited from the grandfather, not in the caſe of land which appertained to that anceſtor. That is wrong; for the term "at his pleaſure," in the text of VISHNU (XXV), denoting arbitrary choice, cannot relate to the double ſhare. But, after premiſing the text of NÁREDA as relating to the patrimony inherited from anceſtors, the obſervation, that this text (XCV) concerns the patrimony ſo inherited, refers it to ſubtraction of gifts, which would be inelegant: and it would contradict a ſubſequent remark, 'becauſe property, conſiſting in the power of aliening at pleaſure, exiſts equally in this and in other wealth.' For the fifth *or ablative* caſe, *aſſigning the reaſon*, is only pertinent under the rule, that whatever be held as property by any perſon, his gift of it is valid. But that rule is in this inſtance infringed; for, wealth left by the grandfather being held as property, the gift of it is, *nevertheleſs*, invalid. Let it not be argued, that, ſince it is neceſſary to ſuppoſe *in that rule* caſes different from the ſixteen void donations which have been propounded by NÁREDA for the purpoſe of annulling a gift made by an inſane perſon, and ſo forth, there is no breach of that rule in this inſtance, becauſe it falls within the ſixteen void gifts,

ſince the houſeholder is declared not to be independent in reſpect of wealth inherited from anceſtors (Book II, Chap. iv. V. 15, 3.). Were it ſo, he would have no independent power over precious ſtones and the like inherited fromtheir forefathers. Nor ſhould it be argued, that the text (Book II, Chap. iv, V. 15, 3.) relates to other wealth beſides precious ſtones and the like, ſince it coincides with that of YAJNYAWALCYA (Book II, Chap. iv, V. 13.). There is no authority for reſtricting the ſenſe; and the text (Book II, Chap. iv. V. 15, 3.) bears a different import, being delivered under the title of Subtraction of Gift. Accordingly the author of the *Mitácſhará*, otherwiſe expounding the equal dominion of father and ſon over property inherited from the grandfather, ſays, 'the gift is not void in this caſe.' He adds, 'even what the grandfather himſelf acquired, ought not to be given away by him, if his ſon or grandſon be living:' and in the title of Subtraction of Gift he expreſsly ſays, that 'gifts are only invalid in the ſixteen caſes of void donations.' So, in expounding the text relative to land acquired by the grandfather (XCII), he notices this diſtinction: 'but, over property inherited from the 'grandfather, both have indiſcriminate dominion; the ſons have 'therefore power to forbid *alienation*.' Neither CHANDÉSWARA, nor any one of his followers, has affirmed, in expreſs terms, that the gift of property, which had deſcended from anceſtors, is invalid. But JÍMÚTAVÁHANA, who is followed by RAGHUNANDANA, conſiders the text (Book II, Chap. iv, V. 13.) as forbidding gift *or alienation*.

In partition of property inherited from the grandfather, whoſe will is conſulted? The anſwer is, partition is granted by the ſole will of the father; for he is owner of that wealth. Conſequently, the term "at his pleaſure," in the text of VISHNU (XXV), ſignifies his pleaſure relative to unequal partition, not his will expreſſed in theſe words "let there be partition." In like manner, by declaring equal dominion, that option *of unequal diviſion* is excepted, not the choice of partition in general. Again; the text of MENU (XCI) ſuppoſes no deſire to make an unequal diviſion. In the text of VYÁSA (XCIV) the ſame is alſo ſuppoſed in the term "againſt his will." No diſtinction of property acquired by the father or grandfather being propounded in the ſeveral texts (XXII, XVII, XX, &c.), this circumſtance is

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the foundation *of the present inference.* It is liable to this objection, that there is no ground for judging what kind of will is determinately meant in the texts of VISHNU and the rest. In the phrases, " he shall not, unless by his free will, make a partition ;" " *he may give or reserve*, at his pleasure, any part of his own acquired wealth ;" and " against their father's will *sons cannot* " *claim a partition* ;" will is considered as relating to partition alone, as appears from the context : but here, again, there is no proof that partition can only be made by the will of the owner ; for, in the case of payment of debts, delivery occurs by the will of the king, or by that of the *creditor*, who receives *payment*. Let it not be argued, that, were it so, partition or gift might be exacted at the option of a stranger. Property and its owner are not subject to the control of a stranger. Accordingly sale does not take place by the will of the purchaser. Then how can the father, and the patrimony which had descended from the grandfather, be subject to the control of the son ? For this very purpose, ownership is figuratively attributed to the son. Consequently, the bank of the Ganges, though different from the river itself, being figuratively called by that name in the phrase ' a cowpen situated on the Ganges,' and in similar expressions, as the coolness, purity, and other properties of the Ganges are thence assumed ; so, ownership being figuratively attributed to the son, though he be not the *true* owner, a right attendant on ownership is alone assumed : and that right consists, according to JÍMÚTAVÁHANA, in the power of claiming partition, and in that of resisting unequal division ; for there is no ground for selecting one of these rights to the exclusion of the other. It does not consist in taking an equal share with the father ; for that is not acknowledged by JÍMÚTAVÁHANA. This, properly explained, is the life of the opinion maintained by CHANDÉSWARA and the rest. However, there is this difference according to them, that the son has only dominion over the patrimony inherited from the grandfather.

What is the father's share of the patrimony inherited from the grandfather?

## XCVI.

NÁREDA :—A father, making a partition, may reserve two shares for himself.

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That is, a father, dividing the eſtate, may reſerve two ſhares in his own right. This text, not being applicable to his own acquired wealth, for which it is already provided that he may keep the greater part of it and remain in his houſe (XXIII), muſt relate ſolely to wealth inherited from the grandfather.

## XCVII.

VRĬHASPATI:—The father, who, during this life, divides *the land which his own father left him*, may himſelf take twice as much *as each of his ſons*.

This and the text of SANC'HA and LIC'HITA (XLIV) muſt be conſidered as relating to that ſubject. In the text cited (XLIV) the appoſition of the words "one" and "ſon" is in the form called *tat puruſha*, "ſon of one;" for this form is preferable to that which is called *bahubríhi*, becauſe the laſt term predominates*. By this expreſſion, the ſon of two fathers is excluded from the text. Sons begotten on the appointed wife by a kinſman are ſons of two fathers, becauſe they are produced by the ſeed of one in the field of another (CCXXXIX). The ſame is alſo true of ſons given and other adopted children. Since the appoſition called *bahubríhi* may be alſo admitted when *the ſenſe* it *conveys* can be juſtified by reaſoning, the obſervation of CHANDÉSWARA and the reſt, that 'the father of an only ſon ſhall have two ſhares, but the father of two or more ſons ſhall have one ſhare,' is accurate. If this be alleged, it muſt be inquired, what reaſoning can juſtify the variation of the father's ſhare with the difference in the number of ſons. It ſhould not be argued, that, ſince the parity of ſhares is ordained by a text of VRĬHASPATI (XCIII), the double ſhare muſt of courſe be affirmed to be the ſole right of a father, who has an only ſon. The ſeeming difficulty may be removed by explaining that text of VRĬHASPATI as relating to the father of a ſon begotten on an appointed wife by a kinſman. Again: the father is ſole owner of wealth inherited from the grandfather, as well as of that which is acquired by himſelf; by his choice, partition is made;

* A reaſon founded on a grammatical rule. T.

made; and he ſhall have two ſhares. But the adoptive father of a ſon, begotten on his wife by a kinſman, ſhall have one ſhare, becauſe *his paternity* is inferior, having adopted the offspring of a different natural father. This concerns immoveable property and the like. But, in the caſe of precious metals, pearls and the like, the father may reſerve the greateſt part of ſuch wealth, and he may make an unequal diviſion of it, giving more to ſome and leſs to others. Such is the opinion of JÍMÚTAVÁHANA and the reſt.

Leſt ſons be diſtreſſed by a gift or other alienation in favour of an unworthy object, it is forbidden in the caſe of immoveable property, even though acquired by the father himſelf (Book II, Chap. iv, V. 14.) Conſequently, the father is guilty of no offence in giving away or *otherwiſe* aliening ſuch property with the conſent of his ſons. The text relative to enjoyment by indulgence (XCV), propounds a diſtinction between property real and perſonal, in reſpect of a valid title veſted by mere enjoyment through indulgence. The gift of immoveable property and the like, to ſons and the reſt, is valid, as it is to ſtrangers. The texts of YÁJNYAWALCYA and VRĬHASPATI (XXXIII and XXXI) relate to wealth acquired by the father; for they coincide with the text of NÁREDA (XXXII), which muſt relate to the property of the father, ſince it expreſſes, "the father is lord of all." However, the unequal diſtribution made by a father, in conſideration of filial piety or the like, has been already reſtricted to his own acquired property: that cannot take place in reſpect of wealth inherited from the grandfather.

But others argue, from the text of MENU (XCI), which forbids participation, unleſs by his free will, in the hereditary eſtate, which has been recovered by the father, that in other caſes partition may be claimed even againſt his will. Thus alone can the text of VYÁSA (XCIV) be accurately applied. By the word "equal," in the texts of YÁJNYAWALCYA and VRĬHASPATI (XCII and XCIII), the parity of rights is propounded: and that parity conſiſts in the ſon's concurrent option of claiming partition. As, in conſequence of the father's ownerſhip, a diſtribution takes place by his choice, ſo likewiſe, in conſequence of the ſon's *title*, under the authority of the law, partition alſo takes place by his choice. Such is the practice. Parity in regard to chattels

chattels equal in value or the like, so that the son shall receive the very same amount which constitutes the father's share, is not intended: for his double share is ordained by the texts of NAREDA and the rest. The import of the words "one" and "son," in the text of SANC'HA (XLIV), must be understood in the mode proposed by JÍMÚTAVÁHANA and the rest. Or "one son," a mere instance comprehending the case of two or more sons, must be considered as an answer to this question: 'in the case of many sons, since they each take one share, and the father takes two shares, they have a less portion; in the case of one son, shall more be taken.' Or the mode of interpretation proposed in the *Párijáta*, may be accurate; 'let the chief son (for the dictionary of AMERA exhibits that sense of the word *éca* "one"), that is, the eldest son, take two shares, as also directed by the text of VRĬHASPATI' (XLV). Or the apposition may be in the form called *bahubríhi*, "he who has one son, that is, an excellent son, who earns wealth:" consequently the meaning, as deduced by implication, is, that the father shall take two shares of wealth acquired by the son, as ordained by CÁTYÁYANA. But as for what is said, that the texts of VRĬHASPATI and the rest, which allot two shares to a father, relate only to wealth acquired by him, and that, in the case of property inherited from ancestors, the decision is regulated by other texts of VRĬHASPATI and the rest (XCIII); to which, *say our opponents*, its inconsistency with the text of HÁRÍTA (XXIII) must not be objected, on the argument, that will or pleasure, denoting arbitrary choice, cannot relate to the double share: for, since there is no certainty what is signified by the term "greater part," which denotes any number from three to 2,187,000 *, it may be considered as intending the double share. That is wrong; for parity with the father being stated in the text of VRĬHASPATI (XLV) as a cause of receiving indiscriminately two shares of property inherited from the grandfather, and of wealth acquired by the father himself, it is proper that the father should have two shares *of the estate however acquired*. This text does not relate to a father eminent by his virtue: for brethren endued with good qualities cannot be equal

* *Mahácshauhiní*; an army consisting of 218,700 squads *(patti)*; each containing one elephant, one car, three horses, and five foot soldiers: an improper example in this case. T.

equal to a father endued with the ſame good qualities; the parity muſt be deduced from the virtue of the brethren, and the ſimple relation of the father. "May divide the eſtate," in the text GÓTAMA (XX), muſt be expounded 'may obtain ſhares.' If partition may take place even by the choice of the ſons, may not a ſon make the partition while his father lives? No; for he is in no text deſcribed as the perſon who makes the diſtribution Therefore a father, induced to make a partition even by his ſon's election of it, ſhall take his own double ſhare. Accordingly, the latter phraſe, "while the father lives, if he chooſe to divide it," is pertinent. Conſequently, if it be much againſt the father's inclination, partition of wealth inherited from the grandfather ſhall not be made; for a ſon is declared not to be his own maſter while his parents live (Book II, Chap. iv. V. xv. 5). But ſons, oppreſſed by a ſtep-mother or the like, may apply to the king, and obtain from their father a partition of the patrimony inherited from the grandfather; not a partition of wealth acquired by the father himſelf, unleſs by his favour. This is the whole meaning of the law.

If a gift to any ſon be valid, why is not the allotment of a greater portion to any one ſon *alſo* valid? Since there is nothing in the law to prevent the inveſtiture of property by an act of the will in favour of another, declared in this form, "let this chattel, quitting me, become his," the gift is valid; but an act of the will in regard to partition, wherein unequal diſtribution is deſigned, and which may be expreſſed in theſe words, "let this man have this as his ſhare in right of filiation or the like," being oppoſed by the law (XXVII and XXVIII), does not transfer property. Let it not be objected, that the additional words "in right of filiation or the like" are nugatory, and therefore the act of the will in regard to gift and to partition may be the ſame. Were it ſo, as a gift in favour of a ſtranger is valid, ſo would be partition; and the word "ſons," and ſimilar terms, in the texts of YÁJNYAWALCYA and the reſt (XXVI &c), would be unmeaning. However, the gift of a man inſtigated by luſt, wrath, or the like, is not valid; as has been mentioned in the chapter on Subtraction of Gift.

The period when partition of wealth inherited from anceſtors may be made, has been alſo propounded by GOTAMA (XX).

"If

"If their mother be too aged to bear more ſons," relates to the patrimony which had deſcended from the grandfather; for, unleſs the mother be too aged to bear more ſons, partition could not be made among exiſting ſons, ſince it is reaſonable to reſerve for thoſe who may be hereafter born, their right to the patrimony inherited from the grandfather: and this is a mere inſtance comprehending the caſe of a father capable of connubial intercourſe, but refraining from it: elſe the ſon of another wife could have no ſhare. This is evident in the text of NÁREDA.

## XCVIII.

NÁREDA:—When the mother is too aged to bear more ſons, and all the ſiſters have been given away *in marriage*, and the father either refrains from pleaſures, or withdraws from worldly concerns, *then ſhall partition be made**.

## XCIX.

VRĬHASPATI:—After the death of both their parents, partition among brethren is ordained; and, even while their parents are living, it is proper, if the mother be too aged to bear more ſons.

This text of VRĬHASPATI alſo relates to partition of property left by the grandfather. If ſhares have been diſtributed, although the mother were not too aged to bear more ſons, what ſhould follow? has a ſon been born after partition, or not? In the firſt caſe, the remaining wealth, omitting what has been conſumed, muſt be brought together, and a ſecond diſtribution muſt be made: for ſons, though born after partition, claim *ſhares of* the patrimony which had deſcended from the grandfather. But, in the ſecond caſe, that very partition is valid. Let it not be objected, that, ſince the mother's arrival at a certain period of life can alone entitle the parceners to divide *the eſtate,*

* The laſt hemiſtich, read variouſly, forms the firſt part of the verſe numbered VI. T.

*estate*, that partition, being made by persons not authorized *to do so*, is void, like one which is made by a stranger. Since the phrase, "when the mother is too aged to bear more sons," may be explained as providing for the participation of a future son, there is no proof by which it can be established to propound a distinct authority for partition. However, property, ill distributed, must be again divided.

C.

VRĬHASPATI*:—When a partition has been made between a father and his sons by the same wife or by different wives, the sons who may be born after the partition shall inherit the estate of the father:

2. A son born before it shall have no claim on the paternal estate *unless he reunite himself*; nor a son born after it, on that of his brother: the duty of paying debts, and the right of giving, pledging, or selling, follow the property inherited; *so that the son born after partition must pay the debts of the father contracted before it.*

What is the application of this text, cited by RAGHUNANDANA and others, which signifies, that the son born before partition shall have no claim on the share reserved by the father when he divided the estate among his sons, nor on the share allotted to his brother by the same partition, nor any power to receive or discharge debts *of his former coheirs*? and what is the application of the following text cited by JÍMÚTAVÁHANA and the rest? for a second partition is directed when a son is born after the first.



* Cited anonymously, but attributed to VRĬHASPATI in a subsequent chapter. T.

## CI.

MENU:—A ſon born after a diviſion *in the lifetime of his father*, ſhall alone inherit the patrimony, or ſhall have a ſhare of it with the divided brethren, if they return and unite themſelves with him*.

No; for thoſe texts may relate ſolely to property acquired by the father himſelf. The reverſe ſhould not be affirmed, that the former text (XCIX) relates to property acquired by the father, and this (CI) to wealth left by the grandfather. In the caſe of wealth inherited from the grandfather, ſhould the preſcribed double ſhare received by the father be conſumed by uſe, ſons born after partition would be deſtitute of property; but, in the caſe of his own acquired wealth, ſince the father may reſerve the greateſt part of it, they will alſo receive allotments out of the remainder of the fortune reſerved: it is therefore proper, not to affirm the reverſe *of the propoſed expoſition*. JÍMÚTAVÁHANA obſerves, if partition of wealth inherited from anceſtors be made before the mother be too aged to bear more ſons, that partition is not proper; ſince ſons, born afterwards, might be deprived of ſubſiſtence (Book II, Chap. iv, V. 12.)†. He conſiders the hereditary means of ſupport as intended by the word "ſubſiſtence" *(vritti)*, which occurs in the text quoted. But others, finding the word "mother" in every text which requires the ceſſation of her periodical diſcharges, argue, that the age of the mother is a requiſite condition of a diſtribution proceeding from the ſon's choice; and this only regards wealth inherited from the grandfather. Then, if partition of property inherited from the grandfather be undertaken by the father's choice, the age of his wife would not be a requiſite condition? That may be

* Quoted partially and anonymouſly in this place. It is cited at large in Chapters VII and VIII, where the laſt hemiſtich is otherwiſe expounded. T.

† Cited in this place as a text of MENU, but formerly quoted from another author. T.

be true. Let it not be objected, that this would contradict the text quoted (Book II, Chap. iv, V. 12.) The word "subsistence" *(vritti)* does not signify wealth left by the grandfather. That term is employed by excellent persons of the present day, as *also* signifying land, a corrody or the like, even though acquired by a man himself; and it is so used by VIJNYÁNÉSWARA. This text, therefore, has the same import with one which has been already quoted (Book II, Chap. iv. V. 14.): and if sons apply to the king for partition, he must inquire whether the mother be past child-bearing; for, if they obtain partition on a false pretence, the rule of VISHNU (CII) must be observed, that the brethren only shall give a share *to the son born after partition*, not the father, since he has committed no offence. The text which will be quoted from YÁJNYAWALCYA bears the same sense. But if partition be made by the father's election, "a son born before it shall have no claim on the paternal estate, nor a son born after it on that of his brother," and so forth, as will be mentioned.

## CII.

VISHNU:—Sons, with whom the father has made a partition, shall give a share to another son who is born after it.

Hence, while the father's right subsists, his choice alone determines the time for *making a partition of* his own acquired wealth: but, in the case of property inherited from ancestors, it is also requisite that the mother be past child-bearing; and, *with this reserve*, the father, or (according to another opinion) he or his son, may choose *the time: partition of* both sorts of property *may be made*, when the father's right terminates *by his demise natural or civil.* These are three periods *for making a partition*, according to JÍMÚTAVÁHANA and the rest. But VIJNYÁNÉSWARA observes: 'hence, while the mother is capable of bearing 'more sons, and the father is still attached *to worldly matters*, 'partition of wealth which was inherited from the grandfather



'may

'may take place by the choice of his sons, even against his 'will.' He considers the phrase, "when the mother is too aged "to bear more sons," as relating to wealth acquired by the father himself.

When the third measure of the text of NÁREDA (XCVIII) is read *vinashté vápy aśarané* (VI), the preceding phrase, which literally signifies "when the mother's periodical uncleanness has "ceased," must be considered as denoting the impossibility of her bearing more sons. The word *aśarané* is expounded, "having quitted the order of a householder." This cannot be questioned as a vain repetition of the term "having resigned" or withdrawn from worldly concerns; for, when a man, abiding in his own house, but devoting himself wholly to the worship of the Deity, to whom he has dedicated his service, withdraws from worldly concerns, he has resigned; but, when he enters into the fourth order, he becomes an anchoret. Either way, abdication is the sole ground on which his property is annulled. Consequently, devesture of property happens three ways; by degradation, by abdication or renunciation, and by natural death. But to this may be objected the case of a leper, *whose property is devested in none of those modes.*

A question may be here proposed for disquisition: if a man, surviving his resignation of worldly concerns, and urged by his fate, cohabit with his wife and beget a son after his property has been divided among his children, what would be the consequence? It is answered, the father's property being devested by abdication, which is a *virtual* gift, and the property being vested in his sons without any effort on their part, how can a child born afterwards have any claim thereon, whether it be or be not divided, since it does not belong to his father? But, in the case of partition made while the mother was capable of bearing more children, a portion must be allotted *to a son born after it*, under the authority of the law; for otherwise the phrase, "if the mother be too aged to bear more children," would be nugatory. "And when all the sisters are given away *in marriage*," is added to shew the necessity of bestowing them *in marriage* after the death of the father; it does not denote, says JÍMÚTAVÁHANA, that partition cannot take place unless the sisters have been given away *in marriage.*

## CIII.

CÁTYÁYANA:—Out of property acquired by a ſon, the father, *if he be living*, ſhall, *on a diviſion of the family*, receive two ſhares *in ſome caſes*, or half *in others*: and the mother, if the father be dead, ſhall take an equal ſhare with her ſon.

What is the import of the firſt hemiſtich in this text propounded by CÁTYÁYANA? Does it relate to property acquired by the ſon, with or without the uſe of the patrimony, or to property of another ſort? On this point JÍMÚTAVÁHANA obſerves, 'of wealth acquired by a ſon through the uſe of the patrimony, 'the father ſhall have half; the ſon, who acquired it, two ſhares; 'and the reſt, one ſhare each: but, out of property acquired by 'a ſon without the uſe of the patrimony, the father ſhall have 'two ſhares; the ſon, who acquired it, ſhall alſo have two 'ſhares; and the reſt are not entitled to any participation.'—*According to this gloſs*, the ſenſe is, becauſe the property was acquired by the ſon. It is conſequently implied, that the father receives either half, or two ſhares, of wealth acquired by his ſon. We muſt not, with the northern RÁMACRĬSHNA, fall into the error of *literally* explaining the terms "out of property acquired by a ſon," conſidering "acquiſition" *(arjana)* as an epithet of the other part of the compound *(vitta)* "*wealth or* property," becauſe the rule expreſſes, that 'neuter derivatives of words denoting action are ſimilar to nouns ſignifying ſubſtance.' This has not the natural properties of ſubſtance.—Whatever word occurs as the laſt term in the appoſition named *ſhaſht'i tat puruſha*, is conſidered as an accident or epithet of the preceding term, whereas, in this inſtance, the ſubject is placed laſt *(arjana vitta)*. But in the inſtance of the term "front of the body" *(pûrva cáya)*, and ſimilar forms of expreſſion, the exception is founded on the ſpecial powers of the word *pûrva* and the reſt. Nouns of action are not of courſe conſidered as epithets, becauſe they are ſimilar to nouns ſignifying ſubſtance; nor is their ſimilarity to ſuch nouns admitted for that purpoſe. Muſt

 not

not the ſimilarity of verbal nouns to words ſignifying ſubſtance, be acknowledged, becauſe they are not treated like thoſe words of action which bear the ſenſe of conjugated verbs? This objection may be anſwered by aſking, Are you then aſhamed to ſay that neuter derivatives of terms ſignifying action are ſimilar to thoſe words of action which take the inflections of nouns? Conſequently, the parity of neuter derivatives with nouns ſignifying ſubſtance, only authorizes their uſe in the dual and plural numbers. As for the notion, that action, being an aſſemblage of ſingle acts, is of courſe numerous, and may therefore be expreſſed in the plural number; that is futile. Were it ſo, words of action bearing the ſenſe of the verbal inflection, *(or of conjugated verbs,)* would alſo expreſs multitude. Grammarians do not admit the unity of acts naturally different *and unconnected*, ſuch as gratifying, throwing, reſpecting, and ſo forth. Nor is it uſual to ſay "boilings," *in ſpeaking* of that action in one houſe, where all the operations of the work are collectively performed.

This is proper; for it is intended to ſhow that a father ſhall take only two ſhares out of property acquired by his ſon through the uſe of wealth common to all the brethren, and without employing the ſeveral property of the father. RAGHUNANDANA.

But others hold, that the father ſhall receive, *for his ſhare*, half *as much as he who acquired it*, if the patrimony were not employed; for his ſon acquired the property, and the father has *only* a claim in right of paternity: but, if the patrimony were employed, he ſhall receive, *for his ſhare*, out of the whole wealth, twice as much as he who acquired it; becauſe he has claims both as owner of the capital, and as father; the acquirer or acquirers, whether one, two, or more, ſhall only receive a third part. Since ſons have alſo an intereſt in their father's property, half the ſum is the only proper allotment; and that being the caſe, *the father ought not to receive a double ſhare* *: if this be alleged, the anſwer is in the negative; for, although their intereſt in his property be admitted, they have not immediate power to diſpoſe of it at pleaſure. In ſuch a caſe, ought the reſt to receive a ſhare or not? They may have a ſhare, ſince the claim of

* An omiſſion is here ſupplied from conjecture. T.

of ſons on their father's eſtate, during his life, is admitted for this very purpoſe.

JÍMÚTAVÁHANA alſo propoſes another mode of interpretation: 'a father, who is endued with good qualities, ſuch as 'ſcience, valour, or the like, ſhall take half the wealth ſo ac-'quired; but, if his claim be ſolely grounded on paternity, he 'ſhall have two ſhares.' Here, nothing is expreſsly ſaid in regard to the patrimony being uſed or not: but as a ſon partakes of wealth acquired by his father, ſo a father is likewiſe entitled to partake of wealth acquired ſolely by his ſon. This is the only accurate expoſition: but is it not at variance with the opinion which maintains that a ſon has no property *excluſively his own?* Although the father be ſole owner of the whole, both at the time of acquiſition, and afterward; ſtill, when partition is made, a portion ſhall be allotted to the ſon, under the authority of the law, in right of acquiſition.

But ſome expound the text, 'the father ſhall have a double ſhare, becauſe he acquired both the ſon and the wealth.' Conſequently the ſenſe is, 'if there be a ſon, the father, who acquires property, ſhall receive two ſhares:' and when partition of his own acquired wealth is made by the father, he ſhall take half, or two ſhares, at his option. That is not conſiſtent with the opinion of JÍMÚTAVÁHANA; for option, conſidered as arbitrary choice, cannot be limited to *the alternative of* two ſhares or *of* half. As for the ſon, acquiſition *affirmed concerning him* is partial, merely *aſſerted* becauſe *a gift of a ſon* has occurred when a man gave away his whole eſtate. It is therefore reaſonable, that, as the ſon partakes of wealth acquired by his father, ſo ſhould the father partake of wealth acquired by his ſon. Conſequently, ſince this text may be adduced to ſatisfy the queſtion, what ſhare ſhould in that caſe be received by a father? there is no *good* argument to ſupport ſuch a bad conſtruction *as that which had been propoſed.*

This, however, is liable to objections. If a father have not property in his ſon, then only can the acquiſition be partial *or figurative.* Now ſuch property in a ſon muſt be acknowledged; elſe, the rule of law, " both parents have power to give, to ſell, or to deſert a ſon" (Book II, Chap. iv, V. 8.), would be unmeaning; for gift or other alienation without property is im-

 poſſible.

poſſible. The expreſſion of the great teacher of logick*, "GOD, to whom generated worlds truly belong," could not be pertinent, unleſs a father had property in his ſon. The *Mârcandéya purâna* and other works record the ſale of his wife and ſon by the univerſal monarch HERIS'CHANDRA, to make good the ſacrificial fee of the ſage VIS'WAMITRA, on the performance of the royal ſacrifice called *râjaſûya*: and the ſale of the ſage S'UNAHS'ÉP'HA by his father, is recorded in *Purânas* and other works. Yet, in fact, the ſame ownerſhip of a wife and ſon, as of chattels, is not admitted; *for*, were it ſo, ſons would be owners of each other after their father's demiſe. Let it not be argued, that ſuch ownerſhip does ſubſiſt; but, as is deduced from reaſoning, veſted in each over himſelf; and hence a ſon whoſe father is dead, may legally ſell himſelf. A ſon would be the owner of his mother and ſiſters. *Now* ſons have not dominion over their mothers: nor ſhall brothers alone give away their unmarried ſiſters; for that would be reprehenſible, while the paternal grandfather is living.

"Half" (CIII) muſt here ſignify equable part, by the rule which expreſſes that equal parts are intended when the proportion is not ſpecified. On the queſtion, whether that half be one ſhare as the moiety of two, or half of the whole, JIMÚTAVÁHANA ſays, 'half of the whole ſum.' For, if half of two ſhares were implied, why not ſay, "or he ſhall receive one ſhare *in other caſes?*" Since the term "two ſhares" muſt have ſome connexion, therefore, to ſatisfy the queſtion, two ſhares of what? 'two ſhares of property acquired by a ſon,' muſt be affirmed. Conſequently, that being the ſubject of partition, it is obviouſly reaſonable to infer, 'half of that property likewiſe, *in other caſes*.'

If the acquiſition be made on his brother's ſtock, lawyers affirm it to be the opinion of RAGHUNANDANA, that he, who acquired the wealth, ſhall in this caſe alſo have a double ſhare; for RAGHUNANDANA ſays, 'when the brother's ſtock was employed, the father ſhall have two ſhares, the acquirer two ſhares, 'and the reſt one each:' and that *ſeems* accurate. Or, if it be RAGHUNANDANA's meaning, that the common ſtock was employed

* UDAYANA'CHA'RYA.

ployed by him who made the acquiſition, ſince it would otherwiſe be inconſiſtent with the obſervation, 'if that horſe 'be afterwards allotted to another, equal partition would be pro-'per; for the acquiſition is made by the exertions of the one, 'and by the labour of a horſe belonging to the other;' what diſtribution ſhall be made when the property is acquired by any one ſon through his own labour *on his brother's ſtock?* The anſwer is, the father ſhall in that caſe have two ſhares, and both his ſons one ſhare each. But if it were acquired on his brother's ſtock and on his own, by his own labour, the acquirer ſhall have two ſhares, the father two ſhares, and he, who ſupplied funds, ſhall have one: and in both caſes the reſt of the brethren ſhall be excluded from participation. Such is the method conſiſtent with reaſoning, to which the law aſſents.

If a man have ſons, and grandſons both in the male and female line, and ſons of a granddaughter, and ſome property be acquired by his ſon's ſon, with ſupplies out of his eſtate, what is the rule of adjuſtment in that caſe? Some argue from the letter of the phraſe, "property acquired by a ſon" (CIII), that what is acquired by a grandſon is ſimilar to the acquiſition of a ſtranger. Conſequently ſince the funds and the perſon have contributed equally *to the acquiſition*, half belongs to the paternal grandfather, and half to the grandſon; but his uncle ſhall have no ſhare, for no text ordains their participation. That half allotted to the grandfather is conſidered as property acquired by him, through the means of the wealth adventured: and hence, wealth acquired through the employment of hereditary property ſhall alſo be divided at the pleaſure of the father. Is it not an unjuſt diſparity, that a grandſon, whoſe own father is dead, ſhall have a ſhare of property, which has been acquired by the ſon of the common anceſtor, through ſupplies from his father's eſtate; but that the uncle ſhould have no ſhare of wealth ſo acquired by a grandſon, whoſe own father is dead? No; for there is no proof that the grandſon, whoſe own father is deceaſed, ſhall in this caſe have any ſhare: the word "brothers" occurs in the text of VYÁSA (CX), and it does not follow that a brother's ſon and his uncle ſhall ſhare together.

The opinion of theſe lawyers is not approved by RAGHUNANDANA;

DANA; for in expounding the text of VYÁSA, he ſays, "brothers" are merely an inſtance from which uncles and the reſt ſhould be alſo underſtood. There is equal reaſon, why ſons, grandſons, and great grandſons in the male line ſhall ſhare in the reverſion of property belonging to the common anceſtor: for the ſon of a ſon alſo belongs to his anceſtor, as the ſlave of a ſlave belongs to the maſter; and ſo does the great grandſon in the male line: this alſo is reaſonable. May not the ſame be affirmed concerning the ſon of a daughter, and the reſt? They are not ſimilar, for their claim is weaker, ſince they confer no benefit *on the anceſtor* while a ſon is living. If it be alleged, ſince a great grandſon alſo, whoſe father is living, is diſqualified *for the performance of obſequies*, he has not an equal claim; this argument is denied—for, when his father dies, he may have a ſimilar claim *with ſons*. This is affirmed, conſidering only natural fitneſs. If, therefore, property be acquired by the ſon of a ſon through ſupplies from his grandfather's eſtate, the grandfather ſhall have half, the uncles and the reſt a ſhare each, and the grandſon, who acquired the property, two ſhares: but if no ſupplies were received from the grandfather's eſtate, the uncles and the reſt ſhall not participate. Thus may the law be conciſely ſtated.

Muſt not the text, which ordains two ſhares (CIII), be conſidered as relating to wealth acquired by a ſon? and there is conſequently no authority for the receipt of two ſhares by a grandfather. No; for it would be unequal that the ſon of a ſon ſhould partake of property acquired by the grandfather himſelf, but the paternal grandfather ſhould not participate in property acquired by his grandſon. The word "ſon" is a mere inſtance of a general ſenſe; elſe the ſame term could not be ſo accepted in the text of YÁJNYAWALCYA (XXVI). If it be a maxim, that the right of ſucceſſion is reciprocal, then, ſhould a grandſon, who is competent to inherit the property of his paternal grandfather, die, would not the paternal grandfather be his ſucceſſor, though his father be living? and hence the word "ſon," in the text of YÁJNYAWALCYA (XXVI), may be taken as illuſtrating a general ſenſe, from the coincidence of other texts (LXXIX); but in this inſtance there is no authority to ſupport ſuch an acceptation. Then a father would be alſo incapable of

ſucceeding

ſucceeding to property which his ſon acquired without employing the patrimony; for the text, ordaining a double ſhare in certain caſes (CIII), may be explained in ſome other manner as relating to a father deficient in virtue, *not as relating to property acquired without uſing the patrimony.* Is not authority wanting to reſtrict the text, which notices property acquired by a ſon? for the receipt of two ſhares, when partition is made, cannot be inapplicable to every caſe of wealth acquired by a ſon before partition. On this ſome remark, that 'the grandſon and great grandſon in the male line having an equal title to inherit with the ſon, it is reaſonable that they ſhould be equally bound to give ſhares of what they themſelves acquire.' But in the caſe of an acquiſition made by the ſon of a daughter, ſhould the property of the maternal grandfather have been employed, he ſhall take a ſhare proportionate to the capital uſed, and the maternal uncles and the reſt *ſhall* have no ſhares; but if the acquiſition were made without ſuch uſe of property, the maternal grandfather ſhall have no ſhare. This muſt be conſidered as the rule in the caſe of an acquiſition made by a ſon, or by the ſon of a daughter.

It has been ſaid, this contradicts the maxim that the right of ſucceſſion is reciprocal. It cannot be argued, that the rule is not infringed, if the condition be added, in *each other's* life-time: for, according to your opinion, a paternal grandfather takes a *ſhare of* property belonging to his grandſon, whoſe father is living; but this grandſon does not *immediately* receive *a ſhare of the* property belonging to his paternal grandfather.

The paternal grandfather does not partake of the wealth acquired by his grandſon, whoſe own father is living, but that father alone *does participate;* for he has the chief dominion over the perſon who makes the acquiſition; and, ſince the acquiſition was effected by *the uſe of* his funds, the paternal grandfather may take one ſhare in proportion to the wealth *employed;* and, in this caſe, it is treated like property acquired by himſelf: but afterwards, when the father makes a partition during his life-time, he ſhall take two ſhares, or half (for there is a difference of opinion on that point), becauſe it was acquired on funds belonging to his father. If this be denied, becauſe, were it ſo, a grandfather, diſtributing property which has been acquired by a grandſon

grandson with supplies from his (the grandfather's) own wealth, must give to sons more than is allotted as a due share to the grandson who made the acquisition; but no share of such property would be given to the paternal uncles and the rest, when partition of property was made after the death of the paternal grandfather: which would be unequal, since the grandson receives a share of the wealth acquired by his uncles. It is answered, the maxim may be thus stated; he who would take *a share of* another's property, if partition were made in his lifetime, shall give a share of his own property to that person if he be living.

If it be argued, *since* a grandfather has dominion over the son of his son, as a master has over the slave of his slave, therefore he shall receive two shares or the like; *the answer is*, the shares are not in this case received in right of such dominion or ownership. Were it so, the father would take the whole wealth acquired by his son. But they are received under the authority of the text and of the maxim *above cited*. Hence *a share of* property acquired by a grandson, or remoter descendant, whose own father is living, is not received by a grandfather. If it be alleged that the law on this point is founded upon reason; for a father, although he have dominion over the whole property acquired by his son, gives it to his son; he must give that property, so acquired, to him, to whom he gives his own wealth, *namely to his son*: what is there contradictory in this? but, since labour is employed in the acquisition, a greater share is assigned by authors, as it were for the wages of that labour. On this strained refinement some lawyers ground a remark, that the ancestor shall give two shares to the acquirer *who is related to him* through the medium of his son, one share to each of the rest, and reserve for himself two shares or the like according to circumstances. But others argue from the opinion, in which the dominion of the surviving ancestor over sons, grandsons and great grandsons is maintained, that the paternal grandfather, having dominion over his grandson through the medium of his son, shall, when he divides the heritage, take two shares or the like in proportion to the use made of his property, and so forth: the father shall not take that allotment, for he does not make the partition. The whole of the remainder shall belong to the acquirer; but, his grandfather's

grandfather's property having been employed, he must give two ſhares to the grandfather, whoſe claim is derived through his own ſon. Conſequently, if the father of him who made the acquiſition have four, and the paternal grandfather have three ſons, five ſhares muſt be allotted to the father of him who made the acquiſition, and four to each of the reſt; afterwards, when the father of him who made the acquiſition divides the property in his life-time, he ſhall ſubdivide four of the ſhares, taking two parts as his own due, and giving one to each *of his ſons:* but he muſt divide the fifth ſhare equally with him who made the acquiſition; for it was not acquired by himſelf, nor by his father or other anceſtor; and the rule directs equality where no other proportion is ſpecified: if the acquirer die in the mean time, leaving no ſon or grandſon, then, even though he leave a wife or diſtant heir, it ſhall be divided by the father among his ſons, like property acquired by himſelf *.

In partition made by a father, how ſhall property inherited by him from his maternal grandfather, who left no daughter or nearer heir, be diſtributed? ſhall he take two ſhares or the like, as if it were property inherited from the paternal grandfather; or may he reſerve a conſiderable part of it, as if it had been acquired by himſelf? To this queſtion ſome reply, that "his own acquired wealth," in the text of VISHNU (XXV), ſignifies that which was gained by his own act; but, what is received from the maternal grandfather, being gained without any exertion on the part of the father, is not acquired by his act; he ſhall therefore receive two ſhares or the like, as ſuggeſted by the general rule. It ſhould not be objected, that the text *only* aſcribing to the father and ſon equal dominion over property left by a paternal grandfather, they have not ſuch claims in this caſe. Their equal dominion is a neceſſary conſequence of conſidering the term, "property left by the paternal grandfather," as a mere inſtance of a general ſenſe: elſe it would not be a rule, that the father, being ſon of one born blind, ſhall take two ſhares or other *greater* portion of property inherited from the paternal great grandfather. Nor ſhould it be objected, that the acquiſition made through his own act can only ſignify a gain proceeding from

* It is not clear, on what arguments this diſtribution is propoſed. T.

from business appertaining to him; else what is accepted as a present, or casually found in the middle of his own house, would not be his own acquired property; and business here signifies his livelihood and so forth, as the case may be: consequently, in this case also, he may justly reserve the greatest part for himself; but he shall only receive two shares or other *similar* portion of property left by the paternal grandfather, since a special law prevents *another* distribution. The term "property left by the paternal grandfather," must be explained property inherited in right of affinity: whether it be received from the paternal great grandfather, or from the maternal grandfather, and so forth, the father and son have equal dominion over it. Nor should it be argued, that property regularly descending from ancestors, is alone intended by the term "estate left by the paternal grandfather;" and that any other property, whether left by a maternal grandfather, or received in a present, or the like, is regulated by the law which allows the reserve of the greatest part and so forth. There is no argument to prove that an estate devolving from the maternal grandfather and the rest is not considered as regularly descending from ancestors: and legislators have not distinguished property devolving eventually *on collaterals or on descendants in the female line.*

That reply is not satisfactory; for, when the heritage of one who leaves no kinsman devolves on a fellow-student, or on a learned priest, the father and son would have equal dominion. In the case where the son of a daughter's son does not succeed to property eventually devolving *on distant heirs, by failure of the direct descent in the male line*, surely that son has no dominion if his father be dead; but, if his father be living, he is not even noticed. The very same exposition is proper in respect of the heritage devolving from the father of the paternal great grandfather, on the grandson of his grandson; for that has not regularly descended from ancestors*. But the heritage of the paternal great grandfather, successively devolving on his son and the rest until it reach the great grandson, has regularly descended; in that case the rule of equal dominion vested in father and son must be argued:

* Regular descent extends only to the great grandson; on failure of him, the estate devolves on the wife, &c. but, after some deviations, the table of successions reverts to the lineal kindred. T.

argued: however, when a great grandſon, whoſe father and grandfather are both dead, ſucceeds to the eſtate of his paternal great grandfather, he and his ſon have equal dominion. There is no objection to explain "property left by the paternal grandfather," an eſtate inherited in right of birth whereby the anceſtor attains a region of bliſs; for texts ſhow, that a man reaches heaven by the birth of a ſon, of a ſon's ſon, and of the ſon of that grandſon (CIV and XI).

## CIV.

YÁJNYAWALCYA:—Through a ſon, a ſon's ſon, and the ſon of a grandſon, the father or anceſtor obtains *bliſs in other* worlds, immortality, and heaven*.

Some thus explain the text quoted: world *(lóca)*, immortality *(anantya)*, heaven *(diva)*, are different regions of joy ſo named; the region of bliſs called *diva*, and the ſolar abode (XI), appear to be the ſame. But others ſay, world *(lóca)* intends a region of joy; by a ſon, a man attains that region; by a ſon's ſon, he enjoys an endleſs abode there; and by the ſon of that grandſon, he reaches the ſolar abode, a region of bliſs ſuperior to the preceding: by heaven *(diva)* is ſignified the ſolar abode; for the general term may be employed in a ſpecial ſenſe: there is conſequently no contradiction in theſe texts. This interpretation is unnoticed by other authors.

## CV.

The *Mahábhárata*:—This young girl, though ſole, will be more *eſtimable* than a hundred, for my lord will

* That is, by their oblations of cakes: therefore, they ſucceed to the deceaſed by a kind of purchaſe; and if the anceſtor leave a ſon, and the ſon of another ſon, and the ſon's ſon of a third ſon, they take equal ſhares of his eſtate, becauſe they confer the benefit equally. This notion is the key to the whole Indian law of inheritance; and, for this reaſon, the law of obſequies, promulgated by MENU, muſt be carefully ſtudied. Note by SIR WILLIAM JONES.

will be relieved from regret, attaining the *blissful* world through a daughter's son.

Under the admission of the text, since a daughter's son inherits in right of birth, whereby his ancestor attains heaven, he and his son may have equal dominion in this case, as if the property had been inherited from the paternal grandfather. If this be alleged, the answer is, the term must be explained, according to the opinion of VIJNYÁNÉSWARA, property inherited in right of birth unattended by any other *requisite* cause. By birth alone property vests in sons and the rest; but it vests in a daughter's son and others by birth, upon failure of sons and the rest. According to other opinions also, it signifies property inherited in right of birth, independent of the general failure of sons and other *near* heirs. Whence is all this deduced? From plain reasoning: since the term "paternal grandfather" must comprehend the paternal great grandfather, and must exclude the maternal grandfather, this interpretation alone is admissible.

But others hold, that what is gained through no affinity or relation, is acquired by the party himself; what is gained through some affinity or relation, is *comprehended under the term* 'left by the grandfather:' in the case of a heritage devolving on a learned priest or a fellow student, there is no objection to admit the equal dominion of father and son. Or what is gained in right of birth, may alone be denoted by "property left by the grandfather:" else, should the father, through avarice or other motive, abandon the paternal estate, and occupy the abode of his maternal grandfather after the decease of that ancestor, the son, born after partition made by that father, when the estate is reduced by consumption, might be destitute of a maintenance. If it be asked, 'is not this remark equally applicable whether he have no property inherited from the paternal, or from the maternal, ancestor, but only property acquired by himself;' and if the objection, 'that the father has wilfully deprived his son of a maintenance, (since he abandoned his patrimony, coveting the wealth of his maternal grandfather, and since that patrimony has not been received by his son; and therefore the cases are dissimilar;) be repelled, because the grandson or other descendant might, if he pleased, take his share of the patrimony, under

under the authority of the subjoined text, "Of wealth inherited "from anceſtors, even though not taken by the father, partition "again extends to the fourth in deſcent; this is a ſettled rule:" and if it be inferred, 'that the father is guilty of the ſin ariſing from the defalcation of *his ſon's* maintenance, if he neglect, give away, or otherwiſe *abandon*, the eſtate of his own father;' they anſwer, the abſolute defect of property inherited from a father or paternal anceſtor, and the deveſture, by partition, of property which has been inherited from a maternal anceſtor, are not ſimilar. Their opinion is liable to objection.

An obſervation ſhould be here made. The participation of a ſon's ſon, whoſe father is dead, and of the ſon's grandſon, whoſe father and grandfather are both deceaſed, is ordained by the texts of CÁTYÁYANA (LXXIX), when partition is made by a father. Hence partition by a grandfather, or great grandfather, is ſurely valid: and if the common anceſtor have no ſurviving ſon, but have a ſon's ſon, or a ſon of a grandſon, partition may be made for his ſake by the grandfather or great grandfather. It ſhould not be objected, that, as a ſhare is ordained for the wife, when partition is made for the ſake of the ſon, ſo it is directed that ſhares ſhall be given to grandſons and the reſt: *and conſequently* partition ſhall not be made for their ſake, becauſe ſons alone are mentioned in the text of YÁJNYAWALCYA (XXVI); and becauſe the texts of CÁTYÁYANA may be ſolely applicable to ſuch caſes. Since a ſon, a ſon's ſon, and the ſon of that grandſon, equally benefit the anceſtor, contributing by their birth to his attainment of heaven, there is no argument on which a diſparity can be eſtabliſhed: but no ſhare is allotted, by any text, to the wife independent of the ſon; and it is therefore fit to eſtabliſh ſuch an inference. A partition made by a maternal anceſtor in favour of a daughter's ſon and the reſt is not legal; but if any one make ſuch a partition, in conſequence of obſerving the practice of diſtributions made by fathers, it is valid, provided all parties conſent; but not otherwiſe. This brief ſtatement of the law may ſuffice.

## CVI.

YÁJNYAWALCYA, after premiſing partition by a father:—One who is able *to earn a livelihood*, and

claims not *a ſhare of the joint property*, may be diſunited from the family, on giving him ſome trifle as a conſideration to prevent future ſtrife; or the portion of an eldeſt ſon may be allotted to the first born: or all *the ſons* may have equal ſhares.

The text is introduced in the *Retnácara* with this remark; 'the legiſlator alſo propounds an exception to theſe two caſes.' Conſequently, to a malevolent and indolent ſon, who is able, *but will not work*, a ſmall portion, merely for the means of ſubſiſtence, ſhall be allotted; not a better portion *than the reſt*, nor *even* an equal ſhare, if his indolence be not authorized by the father: and this takes effect, even againſt the will of the parent; for it is ordained by the law. However, this maxim concerns property acquired by the ſons, not that which has been acquired by the father or anceſtor. The author of the *Pracáſa* expounds the text, 'giving ſome trifle of ſmall value, to prevent 'future ſtrife with his ſons, diſunion of religious ceremonies, or 'partition, may be made.' BHAVADÉVA, the *Mitácſhará*, and the reſt, furniſh the ſame expoſition. The term *(aníhamána), which is explained malevolent in the preceding comment, more properly* ſignifies not wanting the wealth of his father. How ſhall he find means of ſubſiſtence without partaking of the patrimony? therefore does the legiſlator add, "who is able;" that is, able to earn a livelihood without *receiving a ſhare of* the patrimony. The context ſuggeſts this ſenſe. The ſons of this coheir might diſpute the equity of the partition, if their father had been diſunited from the family, with a trifle given to him; but, according to this laſt opinion, in which the verb *íh* is taken in its ſenſe of 'ſtrive,' if future conteſts be prevented by his voluntary acceptance of an inferior ſhare, it is alſo prevented by his voluntary renunciation of his own right. This is liable to objection; for a fine to the king is denounced (CCCLXXVIII) againſt him who voluntarily accepts an inferior ſhare *and afterwards diſputes the partition*, not againſt him who voluntarily renounces his ſhare *and afterwards revives his claim*. The laſt opinion muſt be therefore admitted, taking the text in its literal ſenſe *(that ſome trifle muſt be given by way of ſhare to prevent future ſtrife)*:

*ſtriſe)*: and in this caſe of partition by a father, ſhould he give no ſhare to any one ſon labouring under no legal diſqualification, ſuch as expulſion from his claſs or the like, it muſt be remembered that ſuch partition is expreſsly declared invalid. This text muſt be alſo adduced in the caſe of partition made after the death of the father, for no other text has been delivered by YÁJNYAWALCYA; and the rule is propounded generally by MENU.

## CVII.

MENU:—If any one of the brethren has a competence from his own occupation, and wants not the property *of his father*, he may debar himſelf from his own ſhare, ſome trifle being given him as a conſideration, *to prevent future ſtriſe.*

The text is thus expounded in the *Pracáśa*: ſhould any one of undivided brothers, through lazineſs or knavery, make no exertion for gain, that is, ſtrive not to improve the former ſtock, nor to acquire other wealth by agriculture or the like, he may be debarred from his ſhare, or, *in other words*, excluded from participation in the wealth acquired by the reſt of the brethren. But there is nothing to prevent his receiving a ſhare of the original ſtock. Hence that ſhall be received by him. However, the legiſlator directs, that a trifle ſhall be given him for his maintenance: and that trifle ſhall be allotted out of the property acquired by his brothers. This allotment is founded on the near connexion between the wealth *formerly poſſeſſed and that now acquired.* But his not receiving a ſhare proportionate to the whole eſtate is the conſequence of his knavery. From the expreſſion "able," *or competent*, it follows, that one who is unable *to aſſiſt the common exertion for gain*, ſhall receive a ſhare proportionate to the whole eſtate. HELAYUDHA expounds the text as follows; to him who takes not his own ſhare, a trifle muſt be given to prevent future ſtriſe with his ſons, and partition may *then* be made. The text of MENU is cited in the *Retnácara* with this remark, 'the legiſlator declares the ſame.' JÍMÚTAVÁHANA, RAGHUNANDANA and others concur in the ſame expoſition; but

 they

they explain 'giving him some trifle for his maintenance,' giving him a handful of rice or the like. The meaning is, he who is able to subsist by his own occupation, and accepts not a share of the joint estate, but *on the contrary* renounces *his own right*, must be supplied, *when necessary*, by his brothers, out of the shares they have severally received. The text of NÁREDA bears the same import, says HELÁYUDHA quoted by MISRA.

## CVIII.

NÁREDA:—He who, being employed in the affairs of the family, performs their business, *receiving no share in the original partition*, shall be supplied by his brethren with food, raiment, and beasts of burden, *to complete for him his full share*.

The commentator's meaning is this: if any one of the brethren, generously declining to receive his share when partition is made, afterwards claim it, the property shall not be thrown together for the purpose of making a new partition on his account, but his share shall be made up by the rest of the brethren contributing severally and proportionally a part of theirs: in this manner shall his share be allotted to him. Consequently, from the ambiguity of the phrase, the import of these texts should be applied to all *these different* cases. The author of the *Pracáśa*, and MISRA, think the right of filiation and the like so indefeasible that, if a share be not received when partition is made, it may be of course obtained by the party himself, or his son, choosing to claim it at a subsequent time. The opinion, delivered in the *Retnácara*, shall be hereafter elucidated.

One being employed for the benefit of his family and relations, performs their business, or work adapted to provide their subsistence, and takes not his share of the patrimony; if he subsequently claim his allotment, he shall be supplied with food, apparel, beasts of burden (mentioned merely by way of illustration), and other things, such as grain, silver, gold, ornaments, and the like; and a full share shall be thus allotted to him. The text is so explained by MISRA and the rest. But the author

author of the *Retnácara* considers the expression, "employed in the affairs of the family," as intending a brother eminent by his good qualities. For instance; being employed in providing for the maintenance of his brethren, their families and his own, he performs that business; he conducts agriculture, or transacts purchase and sale or the like; he shall therefore be advanced by the rest of the brethren who perform not such work: consequently, on account of his virtue in exerting himself for the maintenance of the family, a superior allotment of food, clothes, beasts of burden and the like shall be given to him. JÍMÚTAVÁHANA and others concur in this exposition. As a better allotment of food, clothes and the like shall be given to him who labours for the support of the united family, so a worse allotment shall be given to that brother who does not make any exertion to support it, though able to do so: and when partition is made, a greater or better share must be given to him by whose exertions the members of the family live; and he who is able, but does not labour for their support, shall be disunited from the family, giving him a maintenance only, as directed by MENU (CVII). The same rule is applicable to the case of partition made by a father. Such is the opinion delivered in the *Retnácara:* and this we hold reasonable; for VYÁSA praises them who make exertions *for the behoof of others.*

## CIX.

VYÁSA:—Useful is the life of him, by whom, while he survives, priests and kinsmen subsist. Who is there that does not live for his own benefit?

Partition with sons begotten on a wife by an appointed kinsman, and other adopted sons, will be considered under the title of Partition after the Death of the Father. If an acquisition be made through the co-operation of all the brethren with their father, an unequal distribution should not be made in consideration of filial piety, of a large family to maintain, and the like, nor in right of seniority and so forth; as has been already noticed. Here a question occurs for discussion: if there be four brothers, the father of whom is living, and who are all skilled

in their duties; but one acquires a piece of land, acting under his father's instructions; what form of distribution shall in this case be followed? Does that land belong to him alone, because he made the acquisition? or is the acquisition considered as made by the father, because he partly contributed to it; and shall all the brethren therefore partake of it? In reply to this question it is asked, was this land or other property purchased, or received as a present, or otherwise acquired? Either the purchase was made with the father's sanction, on a reference to him in words to the following effect, at the time when the bargain was proposed, "this man offers to sell me this property; what should be done?" or else the purchase or other acquisition was made by the son receiving express orders from his father to effect it. In the first case, the price being paid out of his own several property; or, in the case of a present received, which was not intended for the father, the donor not having said, "deliver this to thy father," the land *so purchased or received* is the sole property of the son. In the second case, it belongs to the father; but if the price were paid out of the son's own several property, and he merely termed it the act of his father, through the ingenuousness of his disposition, the son shall have a share; and it shall be proportionate to the wealth invested. But the personal labour of the son belongs to the father; for the son is his representative, and subject to his power (Book II, Chap. iv, V. 8). Let it not be argued that the son can have no several property, since his father is owner even of that which is acquired by him (Book III, Chap. i, V. 52): how then should he have a share of the acquisition? That text is considered by JÍMÚTAVÁHANA, and the rest, as merely intending that a son, whose father is living, is not his own master even in respect of his own acquired wealth. For, if sons and the rest have not property in that which they earn, there could not be an acquisition made by them; since acquisition signifies such an act as becomes a cause of property *vested in the agent*. Else, the father having property in that which was acquired by his son during his lifetime without using the patrimony, all the brethren would have equal shares after his demise. It would follow, that sons and the rest would lose all religious rites, which must be defrayed with money; since the father's property would be revived in that which he himself

himſelf gave to his ſons. Conſequently the ſacrifice with the moon-plant could not have been accompliſhed, as recorded in the *Mahábhárata*, by BHÚRIŚRAVA during the life of VÁHLÍCA, nor other ceremonies by other perſons during the life of their father. VÁCHESPATI BHATTÁCHÁRYA concurs in this opinion, and in the text of CÁTYÁYANA (Book I, V. 8), which forbids the lending of money to women and the reſt, their inability to acquire wealth is the motive of the precept; accordingly children or minors, not ſons, are there mentioned.

But others argue from the text which expreſsly declares the right of a father and the reſt to wealth acquired by a ſon *and others* (Book III, Chap. i, V. 52), and from the maxim 'what 'is clear ſhall not be explained by inductions from other pre'miſes,' that a father and the reſt have ownerſhip: a right, proceeding from acquiſition, *firſt* veſts in the ſons; afterwards, property alſo veſts in the father by reaſon of the ſon's right, which is ſubſervient to the father's. But the ownerſhip of the ſon is not deveſted, for a text declares property common to the married couple; and there is no inconſiſtency in the contemporary property of father and ſon, any more than in the property of a wife while her huſband lives. The abſolute right and independent power of a wife over that which is given to her by her huſband, and of a ſon over that which is given to him by his father, muſt be eſtabliſhed; for texts declare the ſeveral property of women; *and it muſt be inferred* in other caſes, from parity of reaſoning, *ſince* the religious ceremonies of ſons and the reſt muſt be defrayed. After the death of the father, another *coheir* ſhall receive a ſhare of ſuch property; as appears from the expreſſion, "with ſupplies from the common eſtate," in the text of VYÁSA (CX): for that may relate to an acquiſition made while the father was living, as well as to one made after his deceaſe.

## CX.

VYÁSA:—If a coheir gain horſes, elephants, cars, or weapons of any ſort, by his own valour or the like, but with ſupplies from the common eſtate, his brethren, *or paternal uncles*, ſhall be ſharers of it:

2. A double ſum is ordained for him; and the other parceners muſt ſhare alike.

As a ſon has a ſhare of wealth acquired by a father, ſo ſhall a father *partake* of wealth acquired by his ſon. Even according to your opinion, the independent power of a ſon, after partition, over his whole property, as intimated by CÁTYÁYANA (CIII), muſt be acknowledged upon *arguments obvious to* common ſenſe. The word "ſon," in that text, muſt ſignify one with whom partition has not been made. Or the ſon's title cauſing property to veſt in the father, is again revived in regard to wealth given to him by his father. On this point no difference of opinion appears in the *Retnácara* and other works: for it is ſaid in the *Retnácara*, in the chapter on the Emancipation of Slaves, 'the 'maſter has no power over property given by him, through fa-'vour, to his ſlave;' and the texts of MENU and others (Book III, Chap. 1, V. lii 2, and liii 2,) are cited *to ſhow the reverſe in other caſes*. MIRSA concurs in that expoſition. Since the ownerſhip of a wife in that kind of wealth which is called the property of women, is propounded by a ſpecial text, her huſband alone is owner of every other kind of property. The prohibition of lending any thing to women and the reſt, as promulgated by CÁTYAYANA under the title of Loans (Book I, V. 8,) is founded on their want of property. However "infant" *there* denotes a child whoſe father is deceaſed, it is merely an inſtance comprehending a ſon whoſe father is living; as has been already mentioned. They thus expound the law.

A father has property in his ſon, as in grain or the like, becauſe he begot that ſon. A huſband has property in his wife, as the receiver of a preſent has in grain, cattle, or the like, becauſe ſhe was given to him by the perſon who begot her. A maſter has property in his ſlave in right of purchaſe or the like. Hence, under the rule, that 'whatever is acquired by a man himſelf belongs to him,' a father has property in that which is acquired by his ſon and ſo forth. But, in the caſe of female property received through favour and ſo forth, a ſtranger may have full dominion over it, with the aſſent of the woman's huſband. Yet in the caſe of female property given by the *woman's* father, we

we do not, they ſay, ſuppoſe a right different from *that which is eſtabliſhed by* the law.

If it be aſked, by way of objection, how can the debts be paid when partition has been made during the life of the father? the anſwer is, they who enjoy ſhares muſt diſcharge the debts. Here a queſtion occurs for diſcuſſion. The father has two ſhares of property left by the paternal grandfather, and the ſons have one ſhare each; the father ſhall *therefore* ſuſtain two parts of the debt, and the ſons one part each: this is indiſputable in the caſe of a debt contracted by the father, but may be diſputed in the caſe of a debt incurred by the paternal grandfather; for the payment by the ſon is productive of no benefit to him, and payment by the father alone is beneficial.

## CXI.

NÁREDA:—What remains of the paternal eſtate, out of which the debts of the father have been paid to thoſe to whom payment had been promiſed *by him*, ſhall be divided among the brothers; care being taken that the father continue not a debtor.

Let it not be argued, that, becauſe this text ſhows it neceſſary to pay the debts of the father when partition is made among brothers after his death, ſurely his debts muſt be paid when partition is made in his life-time: and ſince it appears from the term "ſucceſſively due," in the text of NÁREDA, which has been cited under the title of Loans, (Book 1, V. 198,) that the debt of the grandfather firſt devolves on the father, and afterwards on the ſon; and ſince it muſt neceſſarily be paid by the grandſon, being due by his father, the grandſons ſhall therefore contribute one ſhare without intereſt (Book I, V. clxvii 2), and the ſon of the original debtor two ſhares with intereſt. From the form of the phraſe, "out of which the debts have been paid," it appears that they muſt be paid previous to partition. Now they cannot be then paid by the grandſon; for as yet he has no property, and he is not the perſon who makes the diſtribution: it is therefore proper that the ſon ſhould make the partition, after firſt diſcharg-

ing

ing the debts with intereſt. Again; when partition is made by a father, a ſhare is allotted to the grandſon, whoſe own father is dead; but ſince the law does not make him liable for the debt of his paternal great grandfather, as well as for that of his father, it ſhall not be diſcharged by him. *But* the father muſt likewiſe diſcharge the debt of his grandfather; for it ought to have been paid in the firſt inſtance by the grandfather. But if he be then unable to diſcharge it, or the term be yet incomplete, let him require from his ſons and grandſons an immediate promiſe of payment: the debt of a paternal great grandfather, or remoter anceſtor, muſt be *ſubſequently* diſcharged in conſequence of ſuch promiſe. In like manner, a promiſe of paying intereſt on the debt of the paternal grandfather ſhould be required. But if there be no property left by the paternal grandfather, and only property acquired by the father, then, ſhould the father, making a partition, reſerve the greateſt part for himſelf, and give an inconſiderable allotment to his ſons, how ſhall the debts of the father and grandfather be apportioned? If he divide the eſtate at his pleaſure, then, ſhould the father reſerve the greateſt part of his fortune burdened with a ſmall part of the debts, his ſons will be diſtreſſed; or if he diſtribute his fortune like property inherited from the grandfather, ſtill the ſons will be diſtreſſed. Therefore the matter muſt be thus reconciled: the father, ſpontaneouſly diſcharging the whole debt, may diſtribute the remainder among his ſons at his pleaſure. But if the debts exceed the property, let him give ſome wealth to the ſons, and aſſeſs the debts in proportion thereto. However, ſons ſhould, without evaſion, voluntarily bear their father's burden. But if the father fraudulently or truly ſay, "my debts exceed my eſtate, how then ſhould I give "ſhares to my ſons?" and his ſons reply, "give us ſhares of the "eſtate, burdened with proportionate ſhares of the debts;" there is no law to authorize the independence of ſons: however, the matter ſhould be adjuſted by the impartial deciſion of arbitrators. This is founded on the reaſon of the law. If there be property of both kinds, acquired by the father, and inherited from the grandfather, and alſo debts of both ſorts, then the debts incurred by the father or grandfather ſhall be diſtributed in the ſame proportions with the property: the fortune of the father, and the debts with which it is burdened, ſhall be treated as the eſtate of

the father; the wealth left by the grandfather, and the debts charged thereon, ſhall be treated as the eſtate of the grandfather. This has been ſufficiently diſcuſſed.

How can partition, made during the life of the father, be called inheritance *(dáyabhága)?* When inheritance is explained 'the heritage which is ſhared,' the portion given by a father in his life-time being received in right of affinity, and heritage ſignifying wealth held as property in right of affinity after the property of the former owner has expired, and that being here connected with partition, the deſcription is unexceptionable. According to the opinion, in which inheritance is explained partition of heritage, ſince it only becomes heritage by the act of partition, heritage is here a ſubject effected by action*, as in the example "he makes a pot." But, according to the opinion, in which inheritance is explained 'participation or ownerſhip of heritage,' ownerſhip being fully veſted in ſons and the reſt after partition, the wealth is heritage; inheritance, conſiſting in ownerſhip predicated of them, may be predicated *of heirs* as far as the fourth in deſcent. This has been ſufficiently explained.

CHAP.

* *Subject*, in philoſophical grammar, is of three kinds:
*prápya*, an effect produced by conjunction, disjunction, and the like, *without altering the form of the ſubſtance*; ex. g. viſits the city.
*vicárya*, when the ſubſtance remains, but its form is changed: ex. g. makes a bracelet of gold.
*nirvartya*, when an effect is produced by action, where the former ſhape of the ſubſtance is not conſidered: ex. g. makes a pot or a carpet. T.

## CHAP. III.

ON

# PARTITION

AMONG BROTHERS.

After the natural or civil death of the father, either let the ſons live together, or let them divide the paternal eſtate. This alternative is propounded by Menu (XVIII.) Let the eldeſt ſon, in the mode above mentioned (Chap. I, Sect. 1.), undertake his father's charge, and ſupport all the brethren, and let them thus live together; or let them live apart: and that living apart is adopted for the ſake of religious duties; for, by the performance of all rites, conſtant, occaſional, and the reſt, out of ſeveral property, the conſequent merit is ſeparate, and ſhared by no other. A ſeparation of abodes is therefore morally right, not cauſed merely by the perverſeneſs of coheirs. May not coparceners ſeverally perform religious rites? No; for it is a certain rule, that the intention of the law is fulfilled by once performing a ſingle religious rite, which is defrayed out of the common property. Since it does not repeatedly occur, it is cuſtomary to perform it once only: and the ſons of a king, not being ſeparately conſecrated to the regal office, unleſs partition be made, are not entitled to perform the ſacrifice called *Rájaſúya* and the like, which muſt be done by a monarch. As for the duty of voluntary gifts and ſo forth, religious offices may be multiplied, even without partition, by the repeated performance of that duty; but conſtant and occaſional rites are fully performed by a ſingle celebration, as has been already mentioned. Still however, in ſome circumſtances,

circumstances, as in that of the *putréshti* sacrifice for the sake of obtaining offspring, religious duties are multiplied by the separate performance of religious ceremonies, even without partition.

This partition should be made with mutual kindness; for unkindness is censured in the *Herivanśa*.

## CXII.

The *Herivanśa*:—No doubt, INDRA! the mutual strife of brothers and of friends gladdens their enemies.

It is requisite that the mother be also dead, before partition can be made by brothers after the decease of their father.

## CXIII.

VYÁSA:—For brothers a common abode is ordained so long as both their parents live; but, by making a partition after the death of their parents, their religious duties are multiplied.

If it be argued, that because brothers are enjoined to live together while their father and mother both survive, partition is suggested when one of them, namely the father, dies: that is denied; for it is a rule, that what occurs first or last in the apposition called *dwandwa* is accepted; each is meant. The mother and father are both suggested by the word "parents" *(pitrau)*, a term formed by the omission of one word *(mâtrĭ)*, which is understood in this expression; and each of the terms suggested relate to the word "live:" the phrase is therefore explained, 'so long as the mother lives, and so long as the father survives.' Else partition would be directed by this text, when the mother alone was dead. The text of YÁJNYAWALCYA must be explained as signifying that partition may be made after the death of both parents, since it has the same import with the text of VYÁSA.

CXIV.

## CXIV.

Yájnyawalcya :—Let the ſons, after the death of their parents, equally ſhare the aſſets, and equally pay the debts of the deceaſed.

Let it not be argued, that, on the contrary, ſons are enjoined to live together while both their parents ſurvive, but may divide the eſtate when either of them dies. Sanc'ha expreſsly declares, that partition cannot be made while either of them ſurvives (XVII).

## CXV.

Vrĭhaspati :—On failure of both their parents, partition among brothers is ordained.

That is, on failure of their father and of their mother. The ſenſe is the ſame in the text of Vyása. While the father lives, let no partition be made, becauſe ſons have not power over his effects ; but why ſhould not partition of the paternal eſtate be made while the mother lives ? To this ſome lawyers, adopting the opinion of Jímútavábana, reply ; 'partition of the paternal eſtate, while the mother lives, is not morally right.' Conſequently the prohibition againſt dividing the patrimony while the mother lives is *a moral precept*, like that againſt eating fleſh-meat on the eighth day of the lunar month, and ſo forth. Hence the ſin of infringing a prohibition is the conſequence of making ſuch a partition. Or an exception is ſuggeſted by this text : it is not morally right ; that is, it does not multiply ſeparate religious duties, they are not ſeparately multiplied while the mother lives. Conſequently the ſenſe of the text (XVII) is deduced from what has preceded : ſons are not independent, that is, they are not entitled to make a partition and ſo forth ; they are not independent while their relation to a ſurviving mother ſubſiſts. Such a partition is invalid in reſpect of religious duties, and is only valid in reſpect of property. Hence, while the mother lives, all participate in every religious rite, even though ſeparately performed. Accordingly, as partition is made while the father lives with his conſent, ſo, reaſoning from analogy,

analogy, while the mother ſurvives, partition muſt be made with her conſent. But, in the one caſe, ſince the father has dominion over the eſtate and over his ſons, he ſhall have a double ſhare; in the other caſe, ſince the mother has dominion over the ſon alone, ſhe ſhall have one ſhare only: and hence the father ſhall have more than a double ſhare of his own acquired wealth; but property acquired by the mother ſhall not be divided, ſince the law does not ordain a partition of it. The text of CÁTYÁYANA (Book II, Chap. iv, V. xv 5) ſhows, that ſons are not their own maſters while their mother lives. Conſequently, after the death of the father, two periods occur for partition, when the mother dies, or, *while living,* when ſhe conſents. But, while the father lives, ſince he has dominion over all, partition ſhall be made by his choice alone; the mother's aſſent is not required: and thoſe who contend for partition of property inherited from the paternal grandfather, at the option of the ſons, think that partition is made by the choice of the father alone, who is induced thereto by the wiſh *or requeſt* of his ſons; for the father is the perſon who makes the diſtribution: the text of HÁRÍTA* denies partition without the father's conſent; and ſons have not immediately ſuch independent power as can enable them to perfect the act *of partition* without reference to another perſon. Accordingly the mother's aſſent is not required for partition by a father.

But ſome lawyers argue from the text which declares property common to the married couple (CCCCXV), that the mother's property, thereby proved, ſubſiſts after the father's death, ſince there is no argument to prove the deveſture of the mother's property, although the father's be annulled by his demiſe; conſequently ſons cannot divide property which is held in common with their mother, without her conſent. It ſhould not be objected, that partition may be made with the conſent of any one owner, even without the acquieſcence of the mother, as it may without the conſent of a brother. The mother having dominion over the eſtate and over her ſon, but he having dominion over the eſtate only, ſhe has greater authority. But the ſame obſervation is not applicable to an elder brother; for he is not highly venerable, *like a mother*. However, it is not cuſtomary

to

* The text which is here quoted has been attributed to SANC'HA (V. 17.).

to make a diſtribution, by which the eldeſt brother would be aggrieved; or, *if partition be made*, the portion of an elder ſon is allotted to him as a token of reſpect. Is it not declared in a text cited by RAGHUNANDANA and VÁCHESPATI BHATTÁCHÁRYA (Book II, Chap. iv, V. xv 1), that the younger brothers are not their own maſters while the eldeſt brother lives, and partition cannot therefore be made without his conſent? It cannot be argued that the text which has been quoted is intended to forbid a gift or alienation by others while there is an eldeſt ſon ſtanding in the place of the father, as directed by MENU (IX); for there is no argument on which the text can be reſtricted to that limited ſenſe. To the queſtion propoſed the anſwer is, No; for the text which has been quoted muſt of courſe be explained as relating to an eldeſt brother, who bears the burthen of ſupporting the family, ſince the law propounded by NÁREDA (XVI) ſuggeſts partition among brothers who are unwilling to live together; and the living together or ſeparately appears from the text of MENU (XVIII), and from many other laws, to be the act of all; and ſince the eldeſt has no dominion over his younger brothers. The expreſſion, "ſeniority is founded on virtue or on age" (Book II. Chap. iv, V. 16), is not inconſiſtent with the phraſe, "or even the youngeſt brother if he be capable of buſineſs" (XVI).

VÁCHESPATI BHATTÁCHÁRYA and many other authors do not concede to this opinion; for they do not acknowledge the wife's property in her huſband's eſtate, ſince ſhe made not the acquiſition. But ultimately there is no variance. No ordinance exiſts, to prove that partition ſhall not be made by grandſons while the wife of their paternal grandfather ſurvives. But ſome lawyers infer, that ſons are not independent in reſpect of their mother's property while ſhe lives, but do not think them dependent in regard of property left by the father: as ſons have an intereſt in, but no independent power over, wealth acquired by their father, while he lives; ſo have they none over wealth acquired by their mother, ſo long as ſhe ſurvives. Theſe lawyers, though they copy VIJNYÁNÉSWARA, are not now followed. This point has been ſufficiently explained.

VRÍHASPATI has propounded two forms of partition, with and without a deducted allotment (XXX). That has been already expounded:

expounded: however, the expreſſion, "with attention to priority of birth," is there a mere inſtance of a general ſenſe, whereby the greater ſhare of one who is pre-eminent by his good qualities or the like is alſo ſuggeſted, as already mentioned.

## CXVI.

VRĬHASPATI:—All the ſons ſhall ſucceed to their father's eſtate, as is ordained; but he who is diſtinguiſhed by ſcience and good conduct, ſhall take a greater ſhare than the reſt:

2. Progenitors become truly the parents of a ſon, through him whoſe fame is ſpread in this world, for ſcience, ſkill in arts, courage, or wealth, and for knowledge, liberality, and virtuous actions.

"Science;" ſtudy of the *Védas* and other branches of ſacred literature: and that is peculiar to the three *firſt* claſſes, the *Bráhmana* and the reſt. "Skill in arts;" knowledge of mechanical trades; and that is peculiar to the fourth tribe and to mixed claſſes. "Courage;" valour: this appertains to the military claſs. "Wealth;" riches: this alludes to the commercial tribe, not to the ſacrificing prieſt, or to the *Súdra;* for riches are cenſured *as a purſuit* of theſe claſſes. "Knowledge;" the knowledge of GOD: this may belong to men of all claſſes by the power of deſtiny. "Liberality;" the meaning is obvious: it may relate to men of all claſſes. "Virtuous actions;" ſuch as are followed by purity: or (reading *crayĕſhu* inſtead of *criyāſu*) the purchaſe of commodities for traffick; meaning alſo the ſale of them; and this appertains to the commercial tribe. By the connective particle, other duties enjoined to the ſeveral claſſes are comprehended *in the text*. "Progenitors become truly the parents of a ſon, through him, &c.;" it is therefore proper that a moſt excellent ſhare ſhould be allotted to him.

Wealth is incidentally mentioned in this text; or it is intended to ſhow, that a ſuperior ſhare ſhall be allotted to one who is able to acquire riches. "Father of a ſon;" the

 word,

word, from its etymology*, signifies related to an excellent son.

When partition is made among sons, an equal share must be allotted to the mother with her sons, and to the wives of the paternal grandfather with their grandsons; as has been already mentioned. But in the case of a *Súdra*, it will be declared, that no deducted allotment shall be given *to the first born.*

RAGHUNANDANA.

This is grounded on the text of MENU (LXVI). It may be objected, that, if the deducted allotment, being included in the shares, render them unequal, this would contradict the observation of JÍMÚTÁVAHANA and others, in expounding the text of MENU (XXIX), that, 'unequal partition on account of filial 'piety or the like is forbidden, not the deducted allotment, 'which is no share.' But VÁCHESPATI-BHATTÁCHÁRYA holds, that 'the deduction in favour of the eldest by birth is denied to 'the servile class, not the deduction in favour of one who is 'pre-eminent by his good qualities.' The text will be otherwise expounded under the title of Partition among Sons by women of the four classes. The case of him who, through laziness or the like, refuses to labour for the support of the family, or of one who, being very able to earn a livelihood, supports his own family without using the paternal estate, has been already considered.

The texts of CÁTYÁYANA (LXXIX 1 and 2) have been explained in the preceding chapter. The first verse relates to partition made by the father. The second expresses, that a nephew, whose own father is dead, shall receive a share from his paternal uncle. The condition, "provided he had received no fortune from his grandfather," must be extended to this case. Consequently, if the grandsons, having received allotments from the paternal grandfather in his life-time, reside apart, and their uncles remain united with their own father, in that case, when these make a second partition, the grandsons shall receive no share. However, grandsons are entitled to obtain partition of that property which had belonged to their paternal grandfather; but the

* The etymology is thus stated in the text; *Putrin* = *putra*, son, + *in*, bearing the same sense with *matup* (or *mat*), a termination denoting excellence.

the fortune previously allotted to them bars a second partition of the same estate. The text of YÁJNYAWALCYA (LXXVIII) has the same import with the last hemistich of the second verse; and the third (LXXIX 3) relates to the same subject.

The text of DÉVALA (LXXXI) is thus explained in the *Retnácara*: 'partition among undivided parceners, and a second 'partition among divided relatives living together after re-union, 'extends to the brother, to his son, and to the son of that son; 'it stops with the son of that grandson, being fourth in descent '*from the common ancestor*.' "Fourth," counted from the owner of the estate *inclusively*, is preceded by the inseparable particle *án* (or *á*), which denotes 'limit *of space or time*.' Consequently, if brethren live together after the death of their father, a brother shall receive a share when partition is subsequently made; or should one of the brothers die before his father, his son shall take his share; should he also die before his grandfather, his son shall receive the share: and if this last also be dead, his son shall not take the allotment; for he is more remote than the fourth in descent. This rule is applicable where partition had not been made; and "second" does not relate to this case. Again: two brothers have re-united themselves; afterwards their sons, grandsons, and great grandsons, die: in that case the son of the great grandson shall not take a share. In the gloss of the *Retnácara*, it is said, 'extends to the brother, to his son, &c.:' brother denotes the son of the re-united heir, or son of the uncle; for it is there remarked on the text of DÉVALA (LXXXII), that 'it is applicable, when, partition not having been made, property, not enjoyed by one coheir, is solely enjoyed by another residing in the same province.' For the brothers are separated; but some property remaining undivided, is successively enjoyed by one brother, and by his son and other descendants, and is not enjoyed by the other nor by his son and descendants: afterwards, when partition is claimed, a considerable lapse of time intervening, this text regulates the decision. Consequently, if it be claimed by the brother, by his son, by the son of that son, or by the son of this grandson, partition shall take place; but if it be claimed by the son of that great grandson, partition shall not be made. However, property vests in the occupant, because the right of the other is annulled by adverse possession:

 accordingly

accordingly the text is pertinent; "Except on failure of kinſmen allied by the funeral cake, the claim of kinſmen allied by family only is not valid." Here affinity by the funeral cake is referred to the owner of the property; conſequently it is not extended to the fifth in deſcent: and this rule is applicable when the party reſided in the ſame province; but if he reſided in a foreign country, property is only deveſted by uſucaption after the ſeventh generation, as will be mentioned.

But ſome expound the text of DÉVALA (LXXXI), 'among undivided parceners (meaning heirs who are re-united, and thoſe between whom partition has not taken place), and among divided relatives (or thoſe between whom partition has been made), who live together, that is, in the ſame country, a ſecond diſtribution, or partition made after re-union, and a diviſion of property, remaining in parcenary when the *firſt* diſtribution was made, and *ſolely* enjoyed by one heir, extends to the fourth in deſcent: but if they do not live together, *that is, in the ſame country*, it extends to the ſeventh generation, as will be mentioned.' They expound the ſubſequent text (LXXXII), 'ſo 'far, that is, as far as the fourth in deſcent, relatives, or perſons 'ſprung from the ſame family, are *ſapindas*, or connected by the 'mutual relation of giving and receiving the funeral cake. Be-'yond him, namely the fourth in deſcent, the funeral oblation 'is reſcinded; the relation by the funeral cake is cut off. What 'follows from theſe premiſes? The legiſlator adds, Sages admit 'that ſucceſſion follows the funeral oblation; if there be a con-'nexion by the funeral cake, participation in hereditable property 'is acknowledged; that is, inheritance takes effect if there be 'ſuch a connexion. This is the ſole purport of the phraſe.' Is it not ſuperfluous to ſay, becauſe property is veſted in the occupant, the fifth in deſcent ſhall not partake of the heritage; for he *of courſe* is not entitled to inherit, ſince the right of the fourth alone is propounded? It ſhould not be argued, that the text concerns the caſe where the deaths happen regularly, the owner dying firſt, and his ſon afterward. Were it ſo, "undivided" would be a ſuperfluous term; for, in the caſe of undivided coheirs, ſhould ſucceſſive perſons die regularly, (the ſon after the father,) participation may extend even to the hundredth generation. It is not ordained that partition among the deſcendants of

of partners in commerce ſhall not extend to the fifth or remoter deſcendant. To the queſtion propoſed, it is anſwered; in the expreſſion "divided heirs," the regular deceaſe of the father before the ſon is ſuppoſed; but in the phraſe, "undivided parceners," the premature death of ſons before their fathers is ſuppoſed. Or this law may not relate to re-union; for the text of BAUDHAYANA (III) eſtabliſhes the ſucceſſion of the ſons of a re-united heir; and ſince they are not divided, it is alſo proved by this circumſtance. Conſequently, by mentioning partition, property is declared. For inſtance, the great grandſon of an undivided coheir ſhall ſhare with the brother of his paternal great grandfather; that is, any property which had remained in common, ſhall be ſhared by the great grandſon of a divided heir. This coincides with the text of CÁTYÁYANA.

But others expound the text, 'among undivided *parceners*, 'and *among* divided heirs living together after re-union, partition 'extends to the great grandſon of the owner.' Or, among heirs undivided from the day of their birth, or living together re-united after a partition, &c. The re-union of partners in trade is excluded. It follows, therefore, that re-union is only affirmed of brothers and the reſt. Among them, a ſecond diſtribution of heritage extends to the great grandſon. The meaning of the text is thus obvious. A ſubſequent verſe (LXXXII) declares generally, that a great grandſon ſhall ſucceed to the heritage.

No author has inſerted the text of CÁTYÁYANA (LXXIX. 1) under the title of partition made by a father. But on the reading, "ſhould a ſon die *(mrĭtē putrē)*, the agent in the ſentence, or perſon by whom ſhares are allotted, is preſented in anſwer to the queſtion, ſon of whom? as in the phraſe, he behaves with piety towards his mother, and in ſimilar forms of expreſſion: now by thus declaring, that, ſhould the ſon of him who makes the partition be dead, the ſon of that ſon ſhall partake of the property, it ſurely follows that this relates to partition made by a father. Accordingly the expreſſions "receive his ſhare" and ſo forth, are not unmeaning *nor inaccurate*. But on the reading of MISRA *(nijé prété)*, which he expounds, 'when the brother himſelf dies,' the text does not ſeem to regard partition made by a father. As in the phraſe, when *the principal* himſelf is abſent let the ſon ſupport the family, "himſelf" ſignifies the perſon

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who ought to ſupport it; ſo, in this phraſe, "himſelf" ſignifies the perſon who ſhould regularly ſucceed to the eſtate: by ſo explaining that reading, the text muſt ſurely relate to partition made by a father: and accordingly the expreſſions "receive a ſhare," and ſo forth, cannot be unmeaning. But "undivided" muſt ſignify one with whom partition has not been made; for the brother's ſhare is implied. However, this text muſt be adduced, as well when the proprietor is living but his ſon dead, as when both the proprietor and his ſon are living but the ſon of that *ſon* dead, or when theſe are all living but the ſon of that *grandſon* dead. The law may be thus conciſely expounded.

## CXVII.

VAS'ISHT'HA:—A ſhare of the heritage with the brothers ſhall be allotted to the widows who have no offspring, but are ſuppoſed pregnant, *to be held by them* until they ſeverally bear ſons.

Since women receive no ſhare when partition is made among brothers, the text appears unmeaning. For this reaſon CHANDÉSWARA propoſes the ſubjoined interpretation: "widows" here ſignify wives of deceaſed brothers. If they be ſuppoſed likely to bear ſons, a ſhare muſt be alſo allotted to them: but if no ſon be produced, that ſhare belongs to the brothers; and the widows muſt be maintained by them. Conſequently ſhares are only allotted to widows for the behoof of their ſons. The brothers ſucceed to the ſhare of a childleſs coheir, although he leave a wife; and they muſt ſupport her: this follows evidently *from the expoſition of the text*. Again; on a curſory view this appears inconſiſtent with the text cited in another place (CCCXCVIII). It is thus reconciled by JÍMÚTAVÁHANA and others: a wife equal in claſs ſucceeds to the eſtate of one who leaves no ſon; but a wife of unequal claſs ſhall be ſupported *by the collateral heirs*. Others reconcile the apparent difficulty in another mode. The whole ſubject will be diſcuſſed under the title of Succeſſion to the eſtate of one who leaves no male iſſue.

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It ſhould be here noticed, that a ſhare muſt alſo be allotted, from parity of reaſoning, to a ſtepmother who is ſuppoſed likely to bear a ſon: and ſuch is the conſiſtent purport of the text, as explained by JÍMUTAVÁHANA and the reſt. But, according to thoſe who contend for the right of the ſtepmother to receive a ſhare when partition is made among brothers, the phraſe, "until ſhe bear a ſon," would be unmeaning. To this it is anſwered, an *equal* ſhare with the brothers muſt be ſet apart until ſhe bear a ſon; but if no ſon be produced, that ſhare ſhall be taken by the brothers. But the allotment of the ſtepmother, being directed by another text, ſhall not be reſumed, even though ſhe bear no ſon. Others conſider this text as relating to the ſon begotten on an appointed wife by a kinſman. This will be explained in its place.

This partition can only be made after diſcharging the father's debts (CXI). RAGHUNANDANA and others expound the term which occurs in that text (CXI), 'to thoſe to whom payment had been promiſed by the father." But the debts of the paternal grandfather muſt be diſcharged previous to partition of wealth inherited from him. If there be no property acquired by the father, and the whole eſtate were left by the paternal grandfather, ſtill, ſince it became the property of the father, his debts muſt be paid before any partition can take place: and if the paternal grandfather ſhould leave no property, his debts muſt be *neverthe-leſs* diſcharged; and that before partition: elſe the ſubſequent arrangements would be difficult. In fact, debts of the paternal grandfather become debts of the father; they are chargeable on him in the firſt place; next on his ſon, as has been already noticed: but the great grandſon of the original debtor ſhall not be compelled to pay the debts, unleſs he take the aſſets.

In what circumſtances is he conſidered as holding the aſſets? Is it only when he becomes the *immediate* heir of his anceſtor, who has ſurvived his own ſon and grandſon? or *is he* likewiſe *conſidered as ſuch*, when the ſon ſucceeded to the eſtate on the death of the proprietor, and after him the grandſon; and on his demiſe the great grandſon? The anſwer is, when the eſtate of the anceſtor paſſes ſucceſſively to his ſon, grandſon, and great grandſon, this laſt is not the *immediate* heir of his great grandfather, but of his own father. Elſe, a man ſucceeding his father in the poſſeſſion of property which had been conferred on him

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by any perſon whomſoever, would, *with equal propriety*, be conſidered as holding aſſets of the donor. Although the ſon of a donee be not conſidered as holding aſſets of the donor, becauſe his title, *being derived from ſucceſſion*, is very different from one which is held under a gift, why ſhould not a man be conſidered as holding aſſets of the donor, if he himſelf be the perſon on whom the property was beſtowed? The term being limited to ſucceſſion in right of affinity or relation, for the ſake of removing this apparent difficulty, he cannot in this caſe be conſidered as ſucceſſor to the eſtate of his paternal great grandfather, for he ſucceeds in right of his relation, as ſon, to his own father. Conſequently he who ſucceeds to the eſtate of another in right of his relation to him, is conſidered as holding aſſets of that perſon. A brother's grandſon inherits, in right of his relation to his great grandfather, an eſtate devolving on him from one who leaves no heir within the degree of brother's ſon: muſt not he pay the debts of his paternal great grandfather? He does not ſucceed ſolely in right of his relation to his paternal great grandfather; but as great grandſon of the proprietor's father. There is conſequently no difficulty. It would be vain to purſue minute diſquiſitions.

It ſhould not be argued, that becauſe the debt was ſucceſſively due from the ſon and grandſon *of the original debtor*, it therefore becomes, *in reſpect of the great grandſon*, a debt of his father and grandfather. A debt is ſaid to become ſucceſſively due *from a ſon and grandſon*, merely to ſhow that the debt of the paternal grandfather muſt be paid out of the property of the father: elſe even the debt of the paternal grandfather would be payable with intereſt. Nor ſhould it be objected, that the law which directs the payment of the grandfather's debt without intereſt, would on this ſuppoſition become nugatory. When a debt has been contracted after the death of the ſon, the grandfather ſubſequently dying, his debt cannot devolve on his ſon, becauſe that ſon is not living: the text which directs payment without intereſt, might be pertinent, as relative to this caſe only. Nor ſhould it be ſaid this is admiſſible. It is reſiſted by common ſenſe.— Therefore, "paternal" ſignifies relating or appertaining to the father; and the ſimilar derivative from grandfather bears a ſimilar ſenſe: that relation conſiſts in the producing *or incurring of the debt*; but in reſpect of the great grandfather there is no difficulty,

culty, for, although his debt devolve on his ſon and grandſon, it was not incurred by them.

RAGHUNANDANA and others remark on a phraſe in the text above cited (CXI), "care being taken that the father continue not a debtor," that if they cannot *immediately pay the debt*, they muſt promiſe the creditor to pay it *at a ſubſequent time* in proportional ſhares. That promiſe will not run in this form, "this debt ſhall be diſcharged by me." Were it ſo, ſince the father would not be declared exonerated from the debt, it could not be ſaid, "care being taken that he continue not a debtor." Conſequently the debt muſt be undertaken in proportion to the ſhare received out of the heritage; for inſtance, if the debt of the father amount to a hundred *ſuvernas*, *four brothers muſt ſeverally declare*, "twenty-five *ſuvernas* thereof conſtitute a debt due from me." Were it ſo, would not a ſon be liable to pay intereſt anew on ſuch a debt, although it had already accumulated to its higheſt limit; for the rate of intereſt ordained by the law, when it has not been *expreſsly* ſtipulated, cannot be barred? It ſhould not be argued, that it is not a debt in the rigorous ſenſe of the term, becauſe there appears no pecuniary tranſaction; and for this reaſon no intereſt is paid. Were it ſo, no intereſt would be paid on the principal ſum, *although it had not accumulated to its higheſt limit*. To the queſtion propoſed the anſwer is, it remains the ſame debt after the promiſe of payment in like manner as a debt ſold: hence intereſt does not recommence. As in the caſe of a debt ſold, ſhould it happen to remain unpaid, the debtor incurs the ſinful taint ariſing from the non-payment of a debt due to a perſon of the buyer's claſs, not that which ariſes from the non-payment of a debt due to a perſon of the ſeller's tribe; and, a preference being given in the order of the claſſes when debts are diſcharged, as the preference follows the tribe of the buyer, not that of the ſeller; ſo in this caſe likewiſe, ſhould the debt happen to remain unpaid, the ſon alone falls to a region of torment, not his father. Again; if it be not diſcharged by him, it muſt be paid by the ſon's ſon; for it was the debt of his grandfather. But if it do not ſucceſſively devolve in this manner, it ſhall not be diſcharged by the ſon's grandſon againſt his will.

It ſhould be here remarked, that he who is averſe from the performance of his father's obſequies, ſhall not obtain a ſhare of the

the inheritance (CCCXX); if land be aſſigned for the father's *śráddha*, by the unanimous conſent of all the parceners, expreſſed in this form, "this land is ſet apart for the paternal *śráddha*," ſuch land muſt not be divided ſo long as they poſſeſs any means of ſupport: this practice ſubſiſts in ſome countries.

## CXVIII.

CÁTYÁYANA:—The houſe, arable land, and quadrupeds, which are diſcovered *to have been the property of the deceaſed*, muſt be equally divided: if it be juſtly ſuſpected that effects are concealed, a diſcovery by ordeal is preſcribed by law.

The term is explained "ordeal" by RAGHUNANDANA.

## CXIX.

VRĬHASPATI:*—Thus MENU declared, that houſehold utenſils, beaſts of burden, weapons, milch cattle, ornaments, and ſlaves, muſt be divided, when diſcovered, among the heirs; and that, if effects are *juſtly ſuſpected to be* hidden, a diſcovery muſt be obtained by the *cóſha*.

The *cóſha*, ſays RAGHUNANDANA, is a particular form of ordeal. Lawyers explain it ordeal, by touching water in which a principal idol has been waſhed. More on this ſubject may be found under the title of Trial by Ordeal.

On the death of the father, the mother has a claim to an equal ſhare with her own ſons; their mothers (ſtepmothers), or his mothers (wives of the paternal grandfather), *for the term is variouſly explained*, take the ſame allotment; and the unmarried daughters, each a fourth of a ſhare (LXXXV). Mothers, ſays VISHNU (LXXXVI), take allotments proportionate to the ſhares of ſons, and ſo do unmarried daughters. Since this coincides with the text of VRĬHASPATI (LXXXV), therefore, according to the ſhares allotted to their own brothers, unmarried daughters

* This text is attributed to CA'TYA'YANA in ſome Digeſts, and is there read, "Thus BHRI'GU" inſtead of "Thus MENU." T.

daughters ſhall take a fourth; they take a quarter of the ſhare allotted to their own brothers: ſuch is the expoſition delivered in the *Retnácara*. But to her who has no brother, ſuch a ſhare muſt be given as ought regularly to be allotted *if ſhe had one*: a quarter of the ſhare, which would be allotted to a ſon of the ſame claſs with her mother, ſhall be computed and given to the damſel for the purpoſe of defraying her *nuptial* ceremony: ſuch is the determinate ſenſe of the text. The meaning is, that the fourth part *of a ſhare* ſhall be given out of the whole eſtate. A fourth part being mentioned in ſeveral texts, ſo much only ſhall be given; but the purpoſe is *to defray* the *nuptial* ceremony.— Such is the interpretation propoſed in the *Calpateru*, with which the *Mitácſhará* and *Pracáśa* concur, as is remarked by CHANDÉSWARA. Conſequently the brother of a daughter produced by the *Bráhmanì* wife, ſhall have four ſhares; and his ſiſter ſhall have a fourth part of that allotment, or one ſhare: but the daughter of a *Cſhatriyá* wife ſhall have a quarter leſs than that ſhare, and ſo forth in the order of the claſſes. Hence the meaning of the remark, that the fourth part of a ſhare ſhall be given out of the whole eſtate, is that a quarter *of a ſhare* ſhall be made good by taking a *ſufficient* ſum out of the allotments of all the brothers. All this is copied from CHANDESWARA.

It follows from what has been ſaid, that the law does not poſitively direct a ſhare to be given to ſiſters as well as to brothers, but their nuptials muſt be defrayed by aſſigning a fourth part *of a ſhare* for that purpoſe. Accordingly the ſiſter taking a fourth part, and defraying the charges of her nuptials with ſome part of the money, may keep the remainder; but her brothers muſt not defray her nuptials with a very inconſiderable ſum, by any *unbecoming* means *of parſimony*: for this end, the allotment of a fourth part is directed. Hence it is ſaid, the purpoſe is to defray the nuptial ceremony. On this ſubject MISRA ſays, the allotment of a fourth part is indeterminate; but the meaning is, that ſo much ſhall be given as may be ſufficient to defray the expences of the marriage. RAGHUNANDANA obſerves, that the text which ordains the allotment of a fourth part, intends the appropriation of a ſufficient ſum for the nuptial ceremony.

## CXX.

Menu :—To the *unmarried* daughters let their brothers give portions out of their own allotments respectively, *according to the classes of their several mothers:* let each give a fourth part of his own distinct share; and they who refuse to give shall be degraded.

Jimútaváhana, commenting on this text, remarks: since it is expressed "let brothers give portions," and since degradation is denounced if they refuse to give the allotment, it follows that daughters do not receive such portions as having a right to share in the succession. To one brother who is entitled to *a share of* the succession, another brother does not give a portion out of his own allotment: if a daughter were entitled to partake of the succession, the parceners not voluntarily yielding her share, would be compelled by the king. Hence degradation, instead of amercement, is properly stated *in this case* under a title of jurisprudence. For this reason it is said, "out of their own allotments." A portion may well be given by a parcener out of his allotment, to one who is not entitled to partake of the succession. Heláyud'ha and others hold, that 'so much only should be given as is sufficient to defray the expence of the sacrament *or marriage*: but 'a fourth part is mentioned by way of example.' If there be brothers unequal in class, and none of equal class, still a portion must be given; else the investiture *or marriage* of a sister would in this case fail. Nor should a quarter of their own share be given, *by brothers inferior in class*, to the daughter of the *Bráhmenì* wife: for Chandéswara observes, that the portion shall be fixed at the fourth part of the share which would belong to a son of the same class.

The text of Menu (CXX) is thus interpreted: the fourth part of the shares which are allotted to brothers of the same class with the sister shall be computed; and deducting that sum, *in due proportion*, out of their own several shares, the brothers shall give it as a portion to the unmarried daughters. If the text

text be read *ſwēbhyah ſwēbhyah* inſtead of *ſwēbhyō'nsēbhyah*, the repetition ſuppoſes two or more brothers; and the ſenſe is, taking a quarter of the allotment of a brother equal in claſs, let the brethren give it as a portion to the unmarried daughters. The ſame meaning is alſo conveyed in the gloſs of MISRA. It is not, however, the ſenſe of the text, that all the brethren ſhall take the ſum out of the allotment of thoſe brothers only who are equal in claſs *with the unmarried ſiſter;* for the reſt of the brethren cannot take the fourth part of the ſhare belonging to the brother who is of the ſame claſs *with the unmarried ſiſter:* the expreſſion "out of their own allotments" would be therefore unmeaning, and the inveſtiture *or marriage* of a ſiſter might fail, ſhould ſhe have no brother equal in claſs.

It is directed, that a fourth part of a ſhare ſhall be given; and that *allotment*, according to CHANDÉSWARA, is merely intended to defray the expenſes of the *nuptial* ceremony. Others hold, that ſo much only ſhall be given as is ſufficient to accompliſh the ſacrament *or marriage*. On this ſubject JÍMÚTAVÁHANA remarks, that if the eſtate be conſiderable, a ſufficient ſum for the nuptial ceremony ſhall be given; and a fourth part *of a ſhare* is not poſitively directed. This muſt be underſtood where the number of daughters and ſons is equal: if the number be unequal, a large ſum is *thus* given to the daughters, or the ſons are altogether deprived of their ſhares. Nor can this be proper; for the ſon is pre-eminent. A fourth part of a ſhare muſt be given to ſiſters; but if they be twice or thrice as numerous, they would receive a greater ſum than their brothers; if they be four times as numerous, the brothers would be deprived of their ſhares; if they be five times as numerous, the caſe would be very puzzling. Yet ſuch a caſe may occur. The rule for giving a quarter of a ſhare cannot *therefore* be received without exception. In fact, the rule only bears, that a brother ſhall give a fourth part, if he have a conſiderable allotment. But if ſiſters be few in number compared with the brothers, or if there be no brothers, another rule of VISHNU muſt be adduced.

## CXXI.

VISHNU:—The marriage and other ceremonies of

 unmarried

unmarried daughters muſt be defrayed in proportion to the wealth *inherited.*

The text of MENU may be underſtood in two ſenſes, from the ambiguity of the terms. Let them give to each ſiſter a portion equal to the fourth part of the ſhare allotted to a brother of the ſame claſs, making up the ſum out of their own allotments reſpectively. Or let them give to their ſiſters one fourth part of their reſpective allotments. Conſequently, ſhould the ſiſters and brothers be equally numerous, a quarter of each allotment muſt be given; if they be leſs numerous, a portion equal to a quarter muſt be made good *for each ſiſter;* if they be more numerous, let the brothers, deducting a fourth part from their own allotments reſpectively, throw all theſe ſums together, and defray the marriages of all their ſiſters out of this fund. However, the rule of giving a quarter is only intended to enſure the purpoſe. For inſtance; a wicked brother might ſay, "my ſiſter ſhall be "given to this abject perſon, who will accept a ſmall nuptial "portion; I care not for the cenſure of the world, provided my "wealth be increaſed." Prevented in this deſign, he muſt obtain an honourable and ſuitable match for his ſiſter. He muſt give ſo much, within a quarter of his own allotment, as ſuffices for ſuch a marriage. However, there is no harm if he exceed the quarter. But, if the precept for allotting a fourth part of a ſhare be univerſal, as ſuppoſed by CHANDÉSWARA, then, ſhould two ſons inherit a fortune of ten trillions, they would both be guilty of a moral offence, if they happen to expend leſs than half a quarter of that ſum on the marriage of a ſiſter. Now that is not conſiſtent with common ſenſe. Hence the precept, conveyed by the rule, is this: let a brother give money, not exceeding a fourth part of his own allotment, until the ſacrament be completed for his ſiſter.

The *Retnácara* and other works, and RAGHUNANDANA and the reſt, concur in expounding 'ſacrament' as denoting marriage. The term may ſignify the ceremony of giving a name and ſo forth; why is it not ſo explained? To this objection we anſwer; the ten ſacraments are only neceſſary for twice-born men, not for *Súdras*, nor for women. Authors therefore conſider the portion aſſigned as intended only for indiſpenſable

ſacraments.

sacraments. The investiture and other ceremonies of a brother, as subsequently mentioned, concern men of twice-born classes: marriage is the only sacrament for a man of the servile class.— This is remarked by VÁCHESPATI BHATTÁCHÁRYA; 'for 'other sacraments besides marriage, are in respect of the `*Súdra* 'voluntary, like the consecration of a pool or other *spontaneous* 'act of religion; they are not required to qualify him for offer- 'ing funeral cakes.' He adds, 'other sacraments are per- 'formed by men of low classes, on account of their riches, to 'attain the rank of *Satśúdra*.' This is founded on the following text.

## CXXII.

The *Brahme-purána*:—A man of the servile class universally obtains marriage as his only sacrament.

The word "universally" denotes that marriage alone is constantly required. Let it not be argued that a `*Súdra* may use holy texts where another sacrament is voluntarily performed.— The text of YAMA also forbids the use of prayers on other occasions; "the servile class shall be so governed, the sacra- "ments being performed without holy texts." That being the case, since the text of YAMA forbids generally the use of prayers at sacraments *performed for men of the servile class*, may not their marriages be performed without holy texts? That is admissible, and such a practice occurs in many instances. Be it so in respect of *Súdras*: how are other sacraments of women merely voluntarily? It must be so held in respect of ceremonies for women of all classes; for the author has omitted to mention it, merely because the preceding reasoning admits of no exception. But those who are disposed to argue that all the sacraments are requisite for `*Súdras* and for women, but their marriages alone are celebrated with prayers, are obliged, in support of this opinion, to give an extension to the meaning of the words "nuptials" and "marriage" which occur *in texts*, as used not in an appropriate sense, but figuratively, for sacrament in general. This point must be so understood from the text which expresses, "the

"the nuptials of women ſprung from twice-born claſſes are
"celebrated with prayers."

Since the gift of a ſhare and of a nuptial portion is directed by two different texts, muſt not both be given? No; for the text of YÁJNYAWALCYA mentions the fourth part of a ſhare as given to defray the ceremony.

## CXXIII.

YÁJNYAWALCYA:—For any of the brothers, whoſe inveſtiture and other ceremonies had not been performed *by the father*, thoſe ceremonies ſhall be performed by brothers, of whom the ſacraments have been completed; and for their ſiſters, by giving a fourth part of their reſpective ſhares.

On this text VIJNYÁNÉSWARA comments: 'by brothers 'making a partition after the death of the father, the inveſtiture, 'and other ceremonies, for brothers not already initiated, muſt 'be performed out of the whole eſtate; and, for ſiſters, of 'whom the ſacraments have not been completed, thoſe cere-'monies muſt be performed, each brother contributing a fourth 'part of his own allotment: hence it appears, that daughters 'ſhall participate after the death of the father.'

## CXXIV.

DÉVALA:—A nuptial portion ſhall be given to *unmarried* daughters out of their father's eſtate*.

## CXXV.

VYÁSA:—For any of the brothers, whoſe inveſtiture and other ceremonies had not been performed, the other brothers, of whom the ſacraments have already been completed, ſhall perform thoſe cere-monies

* See the ſequel of the text at V. 420.

monies *at the expense of the paternal estate*: and for *unmarried* sisters, the sacraments shall be completed by their elder brothers, as the law requires.

Since a nuptial portion is ordained in this and in many texts, and a fourth part of their brother's allotment is stated in other texts, by MENU (CXX) and the rest, the gift of these portions must be argued *in different cases* upon the preceding reasoning. CÁTYÁYANA propounds both forms.

## CXXVI.

CÁTYÁYANA:—For unmarried daughters a fourth share is ordained, and three shares for sons; but if the estate be small, a daughter is considered as having a right *to a sufficient portion, without determining the rate.*

The *Retnácara* has this comment: 'If the portion fixed at a 'fourth part of a brother's allotment be insufficient, and a larger 'sum be required to defray the charges of the nuptial ceremony, 'a girl has a right to that sum, wherewith her marriage may be 'defrayed: so much, therefore, must be given by a brother, out 'of his own allotment, to defray his sister's nuptials.' It should not be said, that the same objection occurs as above-mentioned; if the sisters be numerous, brothers might be reduced to a small allotment, or be altogether deprived of their shares. Brothers are not reduced to a small allotment, nor altogether deprived of their portions, by dividing the estate into shares according to the number of brothers quadrupled and added to the simple number of sisters, and allotting four shares to each of the brothers and one share to each of the sisters. Nor should it be objected, why has not this mode been noticed by JÍMÚTAVÁHANA? It was his independent choice *to omit it.* The sense of the text is, if the whole estate be small, daughters have a right, that is, a claim similar to property. The meaning has been explained in the *Retnácara.* According to this construction, the texts of DÉVALA and the rest may relate to the case where the estate is small;

and the allotment of more than a fourth ſhare is therefore authorized. But, in fact, this ſhould only be admitted when the eſtate is very inconſiderable: becauſe an unmarried daughter is, as it were, a debt left by the father; ſince a text *declares him criminal* if his daughter's marriage be not accompliſhed, and another law forbids the ſale of a damſel.

If a damſel, yet unmarried, arrive at puberty in the houſe of her father, he is guilty of infanticide *by detaining her at a time when ſhe might have been a mother;* and the damſel is held degraded to the ſervile claſs.

That country is held degraded, wherein dwells a man who has ſold *his daughter to the* embraces *of a purchaſer:*

But JÍMÚTAVÁHANA otherwiſe expounds the text of CÁTYÁYANA (CXXVI): if the eſtate be inconſiderable, daughters have a right to one ſhare, and brothers to three. The opinion delivered in the *Retnácara*, though true by the letter of the law, ſeems inconſiſtent with common ſenſe; for it may ſometimes happen that the nuptial ceremony could be defrayed with leſs than a fourth part of a ſhare. If the father leave no property, how ſhall a ſiſter's marriage be defrayed? It is not any way defrayed; for the texts of VYÁSA and DÉVALA (CXXIV and CXXV) direct, that the ceremonies ſhall be performed out of the paternal eſtate; it is not indeed expreſsly mentioned in other texts, but a rule directs, not to explain by other arguments what is already obvious.

## CXXVII.

NÁREDA*:—Or, if no property of the father remain, the inveſtiture and other ceremonies muſt be performed

* This text ſhould regularly follow that numbered CXXVIII, but I do not alter the arrangement of the original. T.

performed out of their own ſhares, by brothers, for whom thoſe ceremonies have already been performed.

It ſhould not be argued from this text of NÁREDA, that if there be no property left by the father, the nuptial ceremony muſt be defrayed out of their own acquired property received in alms or the like. That is not admitted by JÍMÚTAVÁHANA. He thinks, that NÁREDA propounds the mode of effecting the inveſtiture and other ceremonies for a brother, when there is no property left by the father, having already propounded (CXXVIII) the neceſſity of performing thoſe ceremonies for brothers, as appears from the terms of that text (CXXVIII) being in the maſculine gender. Conſequently, ſince he had premiſed the inveſtiture of brothers, the ſame ceremony muſt be intended by the context, not the marriage of a ſiſter; and both texts of NÁREDA muſt be ſo expounded.

## CXXVIII.

NÁREDA*:—For any of the brothers, whoſe inveſtiture and other ceremonies had not been performed by the father in due order, the other brothers ſhall perform thoſe ceremonies at the expenſe of the paternal eſtate.

But others hold, that, reaſoning from analogy, the marriage of a ſiſter muſt be defrayed *by brothers* out of their own acquired property; elſe, it would be imputed as a great offence to the father, that the marriage of his daughter did not take place. JÍMÚTAVÁHANA himſelf has uſed arguments drawn from analogy, in treating of Inheritance. For example; in commenting on the text of YÁJNYAWALCYA (LXXXIII), which denies the participation of a wife, to whom female property has been already given, he quotes the text concerning a superſeded wife (LXXXVII): now this is an argument drawn from analogy; and that which is eſtabliſhed in one caſe, is applicable

 to

* Attributed to VYA'SA in the *Vivádárnava Setu.*

to another, unleſs a ſpecial objection occur. No difficulty is even ſuppoſed upon the interpretation of thoſe who conſider the feminine as underſtood in the maſculine terms of the text. If the particular practice eſtabliſhed among the *Bráhmanas* of this country by the mighty prince BELLÁLA SENA, who poſſeſſed unbounded powers by the favour of the Supreme Deity, be conſidered, the *Bráhmana*, who is ſelected by the prieſt of the family, muſt accept a damſel whoſe father is deceaſed, to ſecure the bliſs of all her father's lineage: hence the charges of the marriage muſt be any-how defrayed *by her natural guardians*; elſe they would infringe the reſpect due to her father's race. This practice, though not enjoined by the law, is here mentioned, becauſe it has univerſally prevailed among the *Bráhmanas* of *Rá'd'ha*. MISRA alſo acquieſces in this opinion.

It ſhould be obſerved, that, to acquire the rank of *Satśúdra*, it is neceſſary for the offspring of a reſpectable *Súdra* to perform the inveſtiture and other ceremonies: and this has not been ordained by the law, but is founded on cuſtom alone.

## CXXIX.

SANC'HA and LIC'HITA:—An unmarried daughter ſhall take the ornaments of a virgin and the female property given *to her mother* at the time of her nuptials.

The unmarried daughter takes "the ornaments of a virgin," that is, her own ornaments, ſuch as bells worn on the ankle and the like. The *Retnácara*.

The meaning is, that ornaments or the like, which have been worn by a daughter in the houſe of her father, the brothers ſhall not divide after his death, deeming them paternal property, but ſhall relinquiſh them to the damſel. "The ornaments of a virgin" may ſignify ornaments which belonged to the mother while ſhe was a virgin, and what was given to her at her nuptials, as expreſſed in the following text.

## CXXX.

BAUDHÁYANA:—Daughters ſhall take the ornaments of their mother given *her* at the time of *her* nuptials, and other effects, *ſuch as clothes and the like.*

The term uſed in the text ſignifies, given at nuptials. They ſhall alſo take, beſides the ornaments, other effects which were given to their mother at the time of her nuptials, ſuch as clothes, metallick veſſels, and the like; and this muſt be underſtood when the mother is deceaſed. The ſubject will be further diſcuſſed under the title of Succeſſion to the Property of a Woman. It has been briefly noticed in this place, being ſuggeſted incidentally. That a girl ſhall not take any other property, is intimated in the following text.

## CXXXI.

BAUDHÁYANA, after premiſing the right of inheritance:—Thoſe who have not faculties *enlightened by knowledge of the law*, ſhall not take the heritage.

This text, grounded on ſcripture, denotes that women are not capable of inheriting. The term *(nirindriyāh)* is explained in the *Pracáśa* 'deſtitute of ſtrength,' *meaning the weaker ſex.*— This, as is obſerved in the *Retnăcara*, relates to other women than thoſe for whom ſhares have been ordained. Accordingly DÉVALA (CCCCXX) mentions the ſucceſſion of a daughter to the eſtate of one who leaves no male iſſue. This ſhall be diſcuſſed under the title of Succeſſion to ſuch perſon.

The following text enjoins the inveſtiture and other ceremonies for brothers:

## CXXXII.

VRĬHASPATI:—For younger brothers, whoſe inveſtiture

titure and other ceremonies have not been performed, their elder brothers ſhall perform them out of the collected wealth of the father.

Some conſider the term *yavíyaſah* as ſubſtituted for *yavíyânſah* with the freedom exerciſed by Sages, omitting the regular inflection and the prolongation of the vowel. *(It conſequently ſignifies younger brothers.)* Others take the term in its regular ſenſe, "of the youngeſt;" and expound the phraſe, 'out of the common eſtate of the youngeſt *and other brothers*.' In effect there is no difference. The *Retnâcara.*

The firſt interpretation is obvious; in the ſecond, "out of the common eſtate" is added to ſhow that the joint ſtock is meant, it being already ſuggeſted that the ceremonies muſt be performed out of the eſtate of the father, in which the youngeſt brother has an intereſt: now the youngeſt has a claim on the common eſtate.

It is remarked in the *Retnâcara*, upon the text of VYÁSA (CXXV), that "ſacraments of ſiſters" ſignifies their nuptials. On the texts of YÁJNYAWALCYA and NÁREDA (CXXIII, CXXVIII and CXXVII), it is remarked in the ſame work, 'that the ſeveral ſacraments of brothers intend the ceremonies, 'from that which is performed on the birth of a male, to his 'inveſtiture with the mark of his claſs.' After the death of a father, the eldeſt brother is alone competent to perform thoſe rites; but in reſpect of marriage, he whoſe inveſtiture and other ceremonies have been performed, is alone competent *to direct the nuptial ceremony* for himſelf, whether his father be living or dead. Accordingly many Sages have uſed the terms "elder brothers," and "brothers of whom the ſacraments have been completed." If it were implied that the ſacraments ſhall be effected by money, thoſe epithets would be unmeaning. It is not meant that younger brothers, or thoſe of whom the ſacraments have not been completed, ſhall not contribute to the expence of a brother's inveſtiture: for that would contradict common ſenſe; becauſe the third brother would contribute nothing towards the inveſtiture of the ſecond, but would receive a contribution from him for his own. On what argument can this be ſhown to be conſiſtent with common ſenſe? If it be propoſed on the ground

of

of the law which ftates that the charges muft be defrayed by elder brothers of whom the facraments have been completed, not by thofe for whom thofe ceremonies have not been performed, (for that removes the difparity of requiring thofe of whom the facraments have not been performed to defray the charges of their own inveftiture,) ftill the epithet "elder" would be unmeaning. If it be alleged, that when a ceremony other than marriage is erroneoufly performed in an irregular order for a younger brother before his elder, the due order being a part, *not the effence* of a right, the ceremony is fully accomplifhed by the performance of the principal *and effential* part, although it have failed in an *unimportant* point; and the text is intended to exempt the fourth brother, whofe facraments had been completed before his elder brother's, during the life of his father: ftill the confequence is not confiftent with common fenfe; for the plain inference is, that every one of thofe for whom the inveftiture and other ceremonies have been performed, fhall contribute money *for the facraments of another brother.* Confequently all the brothers, whether elder or younger, whether their facraments have or have not been completed, fhall contribute money for the ceremony *to be performed;* but the eldeft alone, whofe inveftiture has been performed, is competent to conduct the ceremony. The facrament to be completed is the inveftiture with the mark of the clafs, not any one ceremony; fince one for whom the ceremony of tonfure only has been performed, is not qualified for acts of religion.

## CXXXIII.

MENU*:—*Till he be invefted with the figns of his clafs* he muft not pronounce any facred text, except what ought to be ufed in obfequies to an anceftor; fince he is on a level with a 'Súdra before his new birth from the revealed fcripture.

He is on a level with a *'Súdra,* becaufe he is not qualified for reading



* Chap. II, v. 172, cited anonymoufly in this place.

reading the *Véda; neverthelefs* he is not unentitled to refpect. The brother for whom a ceremony is to be performed, muft contribute to the charges of it; as is made evident by VRIHASPATI, "their elder brothers fhall perform thofe ceremonies out of the "collected wealth of the father" (CXXXII). Why is it faid, 'the ceremonies from that which is performed on the birth of a 'male?' for that is not the firft holy rite. The father alone performing the ceremony attending prayers for conception (CXXXIV), a brother is not competent *to recite them.* The ceremony to obtain male offspring, and that of combing the wife's treffes, need only be performed once; and having been already fulfilled while the eldeft brother was in the mother's womb, there is no occafion for repeating them*. By mentioning 'ceremonies from that performed on the birth of a male,' it is intimated, that a brother by a different mother is not competent, in the firft inftance, to perform that and the fubfequent ceremonies.

## CXXXIV.

Let the father himfelf perform the eight ceremonies which perfect *the fecond birth of a twice-born man,* like the ceremony on conception; or on failure of him, let another perform them in regular order †.

An

* Thefe ceremonies precede birth. 1ft, *Garbhádhána,* a ceremony which fhould precede conception. 2d, *Punfavana,* a rite performed at the expiration of the third month of pregnancy. 3d, *Símantónnayana,* performed in the 4th, 6th, or 8th month of the firft pregnancy. T.

† By thefe eight ceremonies I underftand—1ft, *Játacarma*; a ceremony ordained on the birth of a male, before the fection of the navel ftring, and which confifts in making him tafte clarified butter out of a golden fpoon. 2d, *Námacarana*; ceremony on giving a name, performed on the 10th day after birth; or on the eleventh, twelfth, or even the hundred and firft day. 3d, *Nifhcramana*; carrying the child out of the houfe to fee the moon, on the third lunar day of the third light fortnight from his birth; or to fee the fun in the third or fourth month. 4th, *Annapráfana*; feeding the child with rice in the fixth or eighth month, or when he has cut teeth. 5th, *Chúdácarana*; the ceremony of tonfure, performed in the fecond or third year after birth. 6th, *Upanayana*; inveftiture with the marks of the clafs, performed in the eighth year from the conception of a *Bráhmana*; but it may be anticipated in the fifth, or be delayed to the fixteenth year. 7th, *Sávitrí*; the ceremony of inveftiture hallowed by the *Gáyatrì,* which muft not

be

An objection may be here suggested. The remark contained in the *Retnácara*, on the texts of NÁREDA, &c. does not seem accurate; the term there used does indeed occur in the text of NÁREDA (CXXVIII), but it neither expresses 'brothers for whom the ceremonies have been completed,' nor 'elder brothers.' This text might therefore be unexceptionably considered as relating to the ceremonies in general, including marriage. Hence all the brothers should contribute to defray the several ceremonies including marriage. This has been thought reasonable by VÁCHESPATI BHATTACHÁRYA. However it appears to be his opinion, that no ceremony can be legally performed for a younger brother before it has been performed for the elder. That point should be examined by a practised mind.

It should be here observed, that, if a younger brother contract a marriage, while the elder has not yet taken a consort, it is not a *legal* ceremony perfecting the class of that younger brother: the eldest must therefore contribute money to repeat that ceremony in a legal form; and the younger brother must perform penance. But the contribution is not ordained by the law for this case. Since all the texts contain the expression "whose investiture and other ceremonies have not been performed," and direct that those ceremonies shall be performed for such brothers; and since a marriage subsequent to one which was legal cannot be considered as the last perfect rite, *(those ceremonies having been completed by the first contract;)* all the brothers shall not contribute to defray the second marriage of any one brother whose wife has deceased. He ought, however, to contract another marriage, to fulfil his duty; as directed by the following text, wherein 'twice-born' is merely illustrative, and relates to the four classes:

But

be delayed for a *Bráhmana* beyond the sixteenth year: it should be performed on the fourth day after the first investiture. 8th, *Samávartana*; ceremony on the return of the student from his preceptor's house. The whole number of ceremonies called *sanscára*, as expiating the sinful taint contracted in the mother's womb, and as effecting regeneration, in other words, as perfecting the class of a twice-born man, are ten. To the eight ceremonies now enumerated must be therefore added the ceremony which precedes conception *(garbh'ád'hána)*, and marriage, which is the last of these sacraments. Rituals contain other ceremonies, two of which are mentioned in the text and in the preceding note, but these are not essential. T.

But let not a twice-born man remain a ſingle inſtant excluded from the *four* orders*.

In the *Retnácara* the text of NAREDA (CXXVII) is read, *bhrátrīnám púrva ſanſcrĭtaih*, "by thoſe, among the brothers, for "whom the ceremonies have been performed." JÍMÚTAVÁHANA reads, *bhrátrĭbhih púrva ſanſcrĭtaih*, "by thoſe brothers "for whom the ceremonies have been performed." According to the opinion of thoſe who conſider the feminine as underſtood in the maſculine terms of another text, "any of the brothers *or ſiſters*" (CXXVIII), the term "ceremonies" muſt ſignify all the rites, from that performed on the birth of a male to his inveſtiture with the marks of his claſs; and, *in the caſe of a ſiſter*, it muſt ſignify marriage alone. According to other opinions, the rites, from that performed on the birth of a male to his inveſtiture, muſt be conſidered as denoted by that term in every text. Since it is expreſſed in every text, that the charges ſhall be defrayed, "brothers" are mentioned indeterminately; where the contribution of money is ordained, that term comprehends a nephew whoſe father is dead, and other heirs; for, ſucceeding to the eſtate of his paternal grandfather, or other anceſtor, he muſt contribute to the charges of the inveſtiture or other ceremony performed for the ſon, as well as diſcharge the debts of that anceſtor. But paternal uncles need not defray thoſe ceremonies for a nephew, ſince the performance of them was a duty incumbent on his father, *not on their's*. Upon this ſubject VÁCHESPATI BHATTÁCHÁRYA ſays, 'a brother is the proper per'ſon to perform and *defray* thoſe ceremonies *for a nephew*, if the 'paternal grandfather be not living.' This is founded on the following text, and on the rule, that an expoſition of law eſtabliſhed in one caſe is applicable to others, unleſs there be good ground of exception.

## CXXXV.

YÁJNYAWALCYA:—In the diſpoſal of a girl, the father,

* If he have no wife living, he is no longer in the order of a married man. To continue in the order of a houſekeeper, he muſt therefore contract another marriage. T.

father, the paternal grandfather, the brother, a kinſman, or the natural mother, ſhall be conſulted in the order here ſpecified: upon the death of the firſt, the right of giving away the damſel devolves on each of the others ſucceſſively, provided they be of ſound underſtanding.

This ſhould be examined. The two acts are not ſimilar; for, were they ſo, a mother would be likewiſe competent to perform the inveſtiture and other ceremonies for her ſon. But, on failure of uterine kindred, brothers of the half blood and ſo forth, as far as learned prieſts (that is, relatives within the degree of *ſapindas* and remoter kinſmen in the order of propinquity), muſt be deemed competent to perform thoſe ceremonies, as common ſenſe ſhows. The order of performing them is this: firſt, the rite on the birth of a male ſhould be performed; next, the ceremony of giving a name, and ſo forth; and among perſons for whom a ceremony is to be performed, it ſhould be firſt done for the eldeſt, and laſt for the youngeſt: but the ceremony of boring the ears is no rite neceſſary to perfect *the twice-born man*. In reſpect of brothers by different mothers, there is no particular order to be obſerved. Such is the opinion of RAGHUNANDANA. To diſcuſs this ſubject further, would be ſuperfluous.

## CXXXVI.

CÁTYÁYANA:—Effects which a kinſman has embezzled, let not a coheir uſe violence to make him reſtore; nor let a coheir be obliged to make good what he had expended before partition.

The firſt hemiſtich relates to effects embezzled, at the time of partition, by a kinſman, that is, by a brother or other coheir: this will be conſidered in another place *. The laſt part of the text is an anſwer to the queſtion, whether a brother ſhall be obliged to make good, at the time of partition, what he had conſumed during coparcenary more than his coheirs, in conſequence

* Chapter VI.

quence of having a large family, or of his being ſubject to greater expence than the others? Conſequently the ſenſe is virtually this; the coheirs ſhall only divide that which remains over and above what has been expended by any of the brethren, who live together and partake of the ſame food. Shall a brother be obliged to make good what he has expended for the nuptials of a daughter? the anſwer is, ſince all the coheirs are intereſted in a duty fulfilled at the charge of the common eſtate, that money is virtually expended by all the parceners; therefore it ſhall not be made good. Nor ſhall that which has been diſburſed for the enjoyment of a woman, be repaid; for the term uſe *or expenditure* comprehends fruition. If it only ſignified the act of ſwallowing, a coheir would be bound to make good what he had previouſly expended for clothes or the like: but what he has embezzled, though not yet diſburſed, muſt be made good. This will be explained in its place. All other property, which is partible, let the coheirs divide. Partible property will be hereafter explained.

The mode of making a partition is declared in a text of MENU (LIII). The deducted allotment muſt be given according to age and virtue, as already mentioned *in a former chapter.* CHANDÉSWARA alleges a reading, *ſamavarnáſu vá játáh,* inſtead of *ſamavarnáſu yé játáh.* He conſiders ſons produced by wives unequal in claſs as comprehended in the text (LIII) by the particle "or" *(vá):* if there be many ſons, the portion of an eldeſt ſon is not ſuppoſed *due to more than one;* the deducted allotment ſhall only be given to the eldeſt of them all. By "many" is meant the number of three or more; for MENU has noticed the portion of a third ſon (XXXIX 2). But other lawyers hold, that the legiſlator, having propounded partition among brothers unequal in claſs, reſumes the ſubject as it relates to brothers of the ſame claſs, for the ſake of embelliſhing his book *by fully explaining the ſubjects treated.* The deduction ſhall be regulated in the mode already explained.

MISRA thus expounds a text of MENU, *cited in a former chapter* (LXXIII): 'it is not the act of their father; therefore no 'deduction of a twentieth part or the like is allowed in this 'caſe.' The meaning is, when property has been acquired by the labour of the brethren, the ſhares, in a diſtribution made by

them, not by their father, ſhall be equal, without any diſparity whatſoever: but if the partition be made by the father, he ſhall have either a double ſhare, or half *of the whole*; it is therefore ſaid, it is not the act of the father. Still it is directed by Menu, that brothers ſhall have equal ſhares (XXIX). Or it may ſignify, "it was not the wealth of the father," merely deſcribing the nature of the property. In effect the additional ſhare of an eldeſt ſon is forbidden in this caſe.

## CXXXVII.

Gótama, after premiſing property acquired by themſelves:—Unlearned brethren muſt make an equal diviſion *of it*.

The text of Menu, formerly cited (CVII), and as there expounded, is properly referred to the caſe of an indolent brother, for it is delivered by Menu when treating of Exertion *for gain* *. It may, however, be taken in another ſenſe, from the ambiguity of the terms; for there is need *of a precept on that ſubject*. This has been already explained at large. The following text *contains a precept* relative to property acquired by the labour of any one brother with ſupplies from the patrimony, but unaided by the labour of the reſt.

## CXXXVIII.

Vasisht'ha:—He among them, by whom property is acquired through his own ſole labour, ſhall take a double ſhare of it †.

It follows, that the reſt ſhall have one ſhare each. Misra concurs in this inference. He remarks on the text of Vyása (CX), that "valour or the like" 'ſignifies generally any mode 'of acquiſition, ſuch as ſcience and the reſt; for the term "or 'the like" relates to the modes *of acquiſition*, and is joined in 'this appoſition to a term of the ſame nature. Is not property 'which

* Chapter IX, v. 207.

† Already inſerted, v. 75.

'which has been gained by learning, valour, and the like, even 'with the use of the common stock, exempt from partition? 'and does not this contradict the rule above cited? No; for that 'relates to the particular exertions of learning, valour and the 'rest, as described by CÁTYÁYANA; but this relates to another 'case; the simple display of learning, not as there described.' (It is not improperly said, "the rule above cited;" for MISRA first considers property gained by learning.) According to MISRA, the rest of the coheirs do not participate in wealth acquired by learning, *in the cases described by* CÁTYÁYANA, even though supplies be received from the joint estate. But this contradicts the opinion of JÍMÚTAVÁHANA and others. It will be discussed under the head of Wealth gained by Learning. But if the common stock be not used, they who make not the acquisition shall have no share. This will be also discussed in the same place. It may be here observed, that the additional share of an eldest son shall not be allowed in this case; because it appears to be only admitted, in the case of property left by the father, on account of the benefit received by him through *the birth of* his eldest son. It should not be objected, that, were it so, the word "all," in texts which ordain equal division, would be superfluous. Since he who makes the acquisition shall have a double share of wealth gained without a common exertion of all the parceners, equal partition does not take place.

Since the term "wives of the same class," in the text of MENU (LIII), is expressed in the plural number, is it not intimated that the distribution shall be made among the brothers produced by two or more wives who are equal in class, not among the mothers? and does not this contradict the rule of GÓTAMA (LIX)? No; for that rule directs partition to be made among brothers through the medium of their mothers, when the number of sons by the several mothers is equal, to avoid the trouble of distributing a very great number of shares. Accordingly that is declared in the texts of VRĬHASPATI (LXII and LXIII). If the sons born of one mother be equal in class with those born of others, that is, if all be of the same class; and if they be equal in number, that is, if the sons produced by each mother be equally numerous; then, all the mothers being equal in class, and having produced an equal number of sons, *such a*

*mode of diſtribution may be adopted.* This is illuſtrative of a general meaning. The ſons muſt be alſo ſuppoſed equal in good qualities; elſe, ſince the portion of the eldeſt ſon muſt be regulated by the degree of virtue *poſſeſſed by him*, a diſtribution could not be properly made through the medium of the mothers. In ſome inſtances the diviſion may be made in right of the mothers, even though the degree of virtue be diſcriminated: but that is not at preſent noticed, becauſe it is not pertinent, ſince it ſuppoſes the ſons not numerous, and becauſe it is encumbered with many wrong *interpretations*. But, if the number be unequal, though the claſs be the ſame, one mother having five ſons, another four, and ſo on, the ſhares muſt be allotted to males (LXIII). The text is delivered to make it evident that the diſtribution may be originally made among males, even in the caſe of many ſons produced by wives equal in claſs. Or the term uſed in the text ſignifies diſtribution regulated by the number of males: and that can only take place when they are of the ſame claſs; for unequal diſtribution will be directed among thoſe who belong to different tribes. Since coheirs of various claſſes have not equal ſhares, the text of VISHNU expreſſes, "let ſons of the ſame claſs receive equal ſhares, but give the beſt chattel with a deducted allotment to the firſt-born" (LIV). The deducted allotment of an eldeſt ſon has been explained.

By directing equal ſhares for ſons produced by wives of the ſame claſs, it is intimated, that ſons produced by wives of various tribes ſhall have unequal ſhares: what portions ſhall they receive?

## CXXXIX*.

MENU:—This law, *which has preceded*, muſt be underſtood of a diſtribution among ſons begotten on women of the ſame claſs: hear now the law concerning ſons by ſeveral women of different claſſes.

2. If

* The three principal texts have been already inſerted at V. 60.

2. If there be four wives of a *Bráhmana* in the direct order of the classes, and sons are produced by them all, this is the rule of partition among them:
3. The chief servant in husbandry, the bull kept for impregnating cows, the riding horse or carriage, the *ring and other* ornaments, and the principal messuage shall be deducted from the inheritance and given to the *Bráhmana* son, together with a larger share by way of pre-eminence:
4. Let *the Bráhmana* take three shares of the residue; the son of the *Cshatriyá* wife, two shares; the son of the *Vaiśyá* wife, a share and a half; and the son of the *Súdrá* wife may take one share.

"A distribution among sons begotten by the same father on "women of equal class;" "the law concerning sons produced "by several women of different classes:" such is the construction of the text. "The chief servant in husbandry;" the ploughman. Hence the ploughman, the bull, the riding horse, the ornaments, and the principal messuage shall be given to the son of the *Bráhmanì* wife; and one of his three shares is allotted to him by way of pre-eminence, because he is the principal and most excellent son. It is observed in the *Retnăcara*, that the bull and the rest shall be given to him, if there be such *cattle and things belonging to the estate.* The term which occurs in the text being expounded "women of the same class," it alludes to partition among sons produced by several mothers of the same class, and to the deducted allotment which had preceded; and that follows from the term being used in the plural number. It is, however, merely illustrative, *and relates also to partition among the sons of one mother.* Several women of different classes are determinately meant; for one wife cannot be of different classes. Yet in fact several is not limited to the literal sense *of three or more,* but intends generally the case of two *or more* wives. The following texts propound a distribution made without any deducted allotment:

## CXL.

MENU :—Or, *if no deduction be made*, let some person learned in the law divide the whole collected estate into ten parts, and make a legal distribution by this *following* rule :

2. Let the son of the *Bráhmanì* take four parts; the son of the *Cshatriyà*, three; let the son of the *Vaiśyà* have two parts; let the son of the `*Súdrá* take a single part, *if he be virtuous*.

" The son of the *Bráhmanì* ;" since the sense is not positively limited to one, the same rule is applicable if there be two or more sons of the *Bráhmanì*. The *Retnácara*.

In a word, the sons of the *Bráhmanì* shall each take three shares, or four. Consequently, if there be two sons by the *Bráhmanì* wife, three by the *Cshatriyà*, two by the *Vaiśyà* and four by the `*Súdrá*, in all eleven sons; the estate must be divided into nineteen or into thirty-three * shares, and six or eight shares must be given to the two *Bráhmanas* ; six or nine shares, to the three *Cshatriyas* ; three or four shares, to the two *Vaiśyas* ; and four to the `*Súdras*. The two forms of distribution, says JÍMÚTAVÁHANA, are regulated by some difference in the degree of virtue. The following text also notices the second mode of partition :

## CXLI.

NÁREDA :—The shares diminish in the order of the classes for sons of an inferior tribe begotten on women legally married.

" Sons of an inferior tribe ;" such as the *Cshatriya* and other sons of a *Bráhmana*. " Legally married ;" lawfully espoused. " The shares diminish ;" that is, the son of the *Bráhmanì* shall

 have

* The number is erroneous in the original : it should be twenty-five. T.

have four ſhares; the ſon produced by the *Cſhatriyà*, three ſhares, and ſo forth. The text is in ſome places read *varnántaréſhu* ſons of other claſſes, inſtead of *varnávaréſhu* ſons of an inferior tribe. Still the ſenſe is the ſame. The *Retnácara.*

The *'Súdra*, being loweſt of all, has one ſhare; the *Vaiśya*, being next above him, ſhall have one more, that is, two ſhares; the *Cſhatriya* ſhall have one more, or, altogether, three ſhares; and the *Bráhmana* ſhall have four; the ſhares are diminiſhed by one in each ſtep. Conſequently, for each inferior tribe the allotment is one ſhare leſs than for the next ſuperior claſs: ſuch is the real ſenſe of the text. The other reading may be explained, 'for each different inferior claſs, the allotment is one ſhare leſs than for the preceding.'

This diſtribution concerns the ſons of a prieſt; but the ſame method may be obſerved in partition among the ſons of a ſoldier or merchant. Conſequently two ſhares, or three, for the ſon of the *Cſhatriyá* wife (CXXXIX and CXL), regard the legitimate ſon of a ſoldier, as well as the legitimate ſon of a prieſt. In like manner, there is no difficulty in conſidering the ſhare and a half and two ſhares for the ſon of the *Vaiśyá*, as relating to the legitimate ſons of a prieſt, of a ſoldier, or of a merchant. It ſhould not be argued, on the other hand, that both forms of partition muſt be conſidered as relating to the legitimate ſons of a prieſt only; becauſe the text premiſes, "if "there be four wives of a *Bráhmana*." YÁJNYAWALCYA propounds the ſecond form of diſtribution for ſuch caſes: and, to ſatisfy the queſtion ariſing on the firſt method, which may be applied to the legitimate ſons of a ſoldier, it is proper ſo to extend its application.

## CXLII.

YÁJNYAWALCYA:—The ſhares allotted to the ſons of a *Bráhmana*, by wives of different tribes, ſhall be four, three, two, and one, in the order of the claſſes; to the ſons of a *Cſhatriya*, three, two, and one; to thoſe of a *Vaiśya*, two, and one.

When a *Bráhmana* has four wives, a *Cſhatriya* three, or a *Vaiśya*

*Vaiśya* two, this is the form of partition among the sons born of them. The terms used in the text are explained in the *Retnácara*, sons of a *Bráhmana* born in different classes; that is, produced by women of various tribes. The same should be understood in the sequel of the text. The first mode of distribution takes place when all the sons are equally virtuous, or *equally* deficient in virtue; the last mode, when the son of the *'Súdrá* wife is alone deficient. But if the son of the *'Súdrá* be very deficient in virtue, the *Mahábhárata* directs the following distribution among the sons of a *Cshatriya*, and among those of a *Vaiśya*.

## CXLIII.

The *Mahábhárata* (BHISHMA addresses YUDHISHT'HIRA):—For a *Cshatriya* two wives are ordained, O son of CURU! or a third wife of the servile class may be taken, but that is not directed in holy writ:

2. The estate of the *Cshatriya* father must be divided into eight parts; and the son of the *Cshatriya* wife shall receive four such parts of his father's estate;
3. And he shall also take whatever implements of war belonged to his father: but the son of the *Vaiśyá* wife shall have three shares, and the son of the *'Súdra* one.
4. The *'Súdrá* shall receive his share, if it be allotted to him by his father, but he is not entitled to claim any portion unless it be expressly given to him. One wife only shall be married by a *Vaiśya*, O son of CURU!
5. Or a second wife of the servile class; but such a second marriage is not ordained in holy writ: his estate shall *however* be divided into five parts.
6. I will now propound the distribution of those shares between his two sons; four shares of the estate shall be taken by the son of the *Vaiśyá* wife;

 7. But

7. But the fifth part ſhall belong to the ſon of the `*Súdrá*: he ſhall receive that ſhare, if it be allotted to him by his father; but he is not entitled to claim any portion, unleſs it be expreſsly given to him.

A ſimilar mode of diſtribution ſhould be eſtabliſhed for the ſons of a *Bráhmana;* ſince the queſtion ariſing on this point cannot otherwiſe be ſatisfied. That diſtribution is as follows: the ſon of the *Bráhmaní* wife ſhall have five ſhares, the ſon of the *Cſhatriyá* four, the ſon of the *Vaiśyà* three, and the ſon of the `*Súdrá* one: the eſtate muſt be therefore divided into thirteen ſhares. This was alſo contemplated by NÁREDA (CXLI). However, the ſon of the `*Súdrá* has two ſhares leſs than the claſs next above him, merely becauſe he is very deficient in virtue.

In the *Vivàda Chintámeni* the verſe concerning the *Vaiśya* (CXLIII 5) is read *dwitíyà vá bhavét `Súdrá na tu driſhtá trĭtiyucá* (or a ſecond wife of the ſervile claſs may be *eſpouſed by him*, but no third wife is *ever* ſeen), inſtead of *dwitíyá vá bhavét `Súdrá na tu driſhántatah ſmrĭtá*. *Drĭſhtánta* here ſignifies the *Véda:* the ſenſe is, that if a third wife of the ſervile claſs, though unnoticed in holy writ, be married by a *Cſhatriyá*, her ſon may have ſuch a ſhare *as is mentioned*. The ſenſe is the ſame in the ſubſequent verſe (CXLIII 5). "The implements of war" are explained in the *Retnácara*, warlike weapons, as a ſcymitar and the like. The eſpouſal of a `*Súdrá* is cenſured by the tenour of the preceding texts. MENU *expreſsly* reprehends ſuch a marriage.

## CXLIV.

MENU:—For the firſt marriage of the twice-born claſſes a woman of the ſame tribe is recommended; but for ſuch as are impelled by inclination to marry again, women in the direct order of the claſſes are to be preferred;

2. A `*Súdrá* woman only muſt be the wife of a *Súdra;*

'*Súdra*; ſhe and a *Vais'yá*, of a *Vais'ya*; thoſe two and a *Cſhatriyá*, of a *Cſhatriya*; thoſe three and a *Bráhmanì*, of a *Bráhmana*.

The particle "only" refers to every part of the ſentence, "ſhe," "thoſe two," "thoſe three;" the ſubſequent phraſe being thus connected with the preceding; marriages muſt in no inſtance be contracted in the inverſe order of the claſſes. "But for ſuch as are impelled by inclination to marry again, wives in the direct order of the claſſes are to be preferred:" this is mentioned to ſhow a venial offence, not abſolute freedom from guilt.

JÍMÚTAVÁHANA.

"Wives in the direct order of the claſſes are to be preferred;" for a *Bráhmana* the moſt proper wife is a *Brâhmanì*; a *Cſhatriyâ* wife is in ſome degree diſapproved; a *Vaiśyâ* is more cenſured; but a '*Súdrá* is much blamed. In this caſe women of the military and commercial claſſes are alſo pronounced to be cenſurable wives for a prieſt, not a '*Súdrá* alone; the ſame is alſo declared in reſpect of a ſoldier: how does it follow, that a '*Súdrá* wife of a *Cſhatriya* has not been noticed by the *Véda*? The following texts reſolve this queſtion.

## CXLV.

MENU and VISHNU:—Men of the twice born claſſes, who, through weakneſs of intellect, irregularly marry women of the loweſt claſs, very ſoon degrade their families and progeny to the ſtate of '*Súdras*:

2. According to ATRI and to (GÓTAMA) the ſon of UTAT'HYA, he who *thus* marries a woman of the ſervile claſs, *if he be a prieſt*, is degraded inſtantly; according to SAUNACA, on the birth of a ſon, *if he be a warrior*; and *if he be a merchant*, on the birth of a ſon's ſon, according to BHRĬGU.

3. A *Bráhmana*, if he take a '*Súdrá* to his bed, *as his firſt wife*, ſinks to the regions of torment; if

 he

he beget a child by her, he loſes even his prieſtly rank.

Theſe texts are cited by JÍMÚTAVÁHANA, when treating of *marriages* in the direct order of the claſſes, with this preliminary obſervation; 'both legiſlators declare it a great offence for a 'twice-born man to marry a woman of the ſervile claſs.' He explains women of the loweſt claſs, '*Súdrá* women. Conſequently the preceding text of MENU pronounces it an offence for a prieſt to marry women of the military and commercial claſſes, and theſe texts notice the greater offence of marrying a woman of the ſervile tribe: the preſent texts (CXLV) do not propound the leſs offence of marrying women of the military or commercial claſſes, as well as the greater offence of marrying a woman of the ſervile tribe; for the term, "women of a low claſs," muſt ſignify '*Súdrá* women; elſe it would diſagree with the context, where it is ſaid, that by ſuch marriages men ſoon degrade their families and progeny to the ſtate of '*Súdras*, for the ſon of a *Cſhatriyá* woman *by a prieſt* is acknowledged as a *Cſhatriya*.

## CXLVI.

*Smrĭti*:—Let men of mixed claſſes perform the ſeveral rites during purity and impurity like *thoſe who belong to the ſame claſs with* their mothers.

Upon the opinion of thoſe who conſider them as '*Súdras*, it cannot be argued that there would be no diſagreement with the context; for the contradiction of the ſubſequent texts (CXLV 2 and 3) could not be well reconciled, nor the inconſiſtency with the text (CXLVII) which introduces thoſe precepts.

## CXLVII.

MENU:—A woman of the ſervile claſs is not mentioned, even in the recital of any ancient ſtory, as the *firſt* wife of a *Bráhmana* or of a *Cſhatriya*, though

though in the greatest difficulty to find a suitable match.

Accordingly HÁRÍTA also passes a severe censure on those who marry women of the servile class.

## CXLVIII.

HÁRÍTA:—No other is sacrilegious like the husband of a *Súdrá*; *for* that priest by whom she conceives shall perish.

This, coinciding with the texts of MENU and the rest, must relate to a *`Súdrá* actually married *by a twice-born man.*

JÍMÚTAVAHANA.

## CXLIX.

SANC'HA:—A *Bráhmaní*, a *Cshatriyá*, and a *Vaiśyá* are pronounced *suitable wives* of a *Bráhmana*; a *Cshatriyá* and a *Vaiśyá*, of a *Cshatriya*:

2. But a *Vaiśyá* is the only wife ordained for a *Vaiśya*, and a *`Súdrá* for a *`Súdra*.

Accordingly SANC'HA enumerates the legal wives for a man of a twice-born class, without mentioning a *Súdrá* woman. Consequently those evils follow the marriage of a *Súdrá*, not the mere procreation of children on a woman of that class; for it is remarked by JÍMÚTAVÁHANA, that 'these evils do not 'follow the procreation of a child on a woman of the servile 'class, who has not been espoused by the begetter; but the offence is venial, and a slight penance must be performed, as will 'be mentioned.'

## CL.

YÁJNYAWALCYA:—What has been said of twice-born men taking wives of the servile class, is not approved by me, because the husband is himself born a second time *through the birth of a son.*

 2. Three

2. Three wives, in the direct order of the classes, *are ordained* for the *Bráhmana;* two and one for the *Cshatriya* and *Vais'ya* respectively; and a woman of his own class for the *'Súdra.*

In the direct, not in the inverse order of the classes. The wives of a *Bráhmana*, *Cshatriya*, and *Vaisya*, are respectively three, two, and one, in number. Some legislators have mentioned, as authorised by the *Véda*, the marriages of *Bráhmanas* and the rest with women of the servile class: that is not my opinion; I propound another exposition of the *Véda*. Such is the sense of the text. It therefore coincides with the observation, that such a marriage is not ordained in holy writ. However, YÁJNYAWALCYA does also recognise the marriage of a *Bráhmana* with *'Súdrá* woman; else his former text (CXLII) would be irrelevant: and such a marriage with a *Súdrá* woman is only contracted through the impulse of inclination, but is not ordained by the *Véda;* for this coincides with the *Mahábhárata* (CXLIII).

## CLI.

PAIT'HI'NASI:—Four wives may be espoused by a *Bráhmana;* and three, two, and one, by men of other classes *respectively.*

That is, three wives may be espoused by a *Cshatriya*, two by a *Vaisya*, and one by a *'Súdra.*

## CLII.

SANC'HA and LIC'HITA:—The most suitable match for every tribe is a wife of the same class*. *Or,* four wives may be allowed to a priest in the order of the classes, three to a warrior, two to a merchant, and one to a man of the servile class.

Consequently

* An option has been already given at V. 149. Note by the Compiler.

Consequently marriage with a woman of the same class only, marriages of twice-born men with women of different classes except the *Súdrá*, and their marriages with women of various classes including the *Súdrá*, are still three practices, of which the last is less proper than the preceding. Such is the sense conveyed: it is mentioned incidentally; the practice is authorized by the law, and a *Bráhmaní* may, at his pleasure, take one, two, three, or four wives, for each of those modes *of acting* have been propounded. VISHNU successively declares the partition to be made when all those wives bear sons, and when any one of them is childless.

## CLIII.

VISHNU:—α′ The sons of a *Bráhmana*, who were produced by women of the four different classes, shall divide the paternal estate into ten parts, of which the son of the *Bráhmaní* shall take four shares; the son of the *Cshatriyá*, three; the son of the *Vaiśyá*, two; and the son of the *Súdrá*, one. β′ But if a *Bráhmana* leave three sons, and none by a *Súdra* wife, they shall divide the estate into nine parts, and take their respective allotments of four, three, and two shares, in the order of the classes.

But if no woman of the commercial class have been taken in marriage, or if such a woman have been espoused, but prove barren, VISHNU also propounds the form of distribution for that case:

γ′ If there be no son of the commercial class, let those of other tribes divide the estate into eight parts, and take respectively four shares, three, and one.

Let the priest take four shares, the warrior three, and the *Súdra* one,

one, in the ſame mode, and for the ſame reaſons, which have been mentioned. He proceeds to the diſtribution made when there is no ſon by the *Cſhatriyá* wife.

δ′ If there be no ſon of the military claſs, the eſtate ſhall be divided into ſeven parts, and the ſeveral allotments ſhall conſiſt of four ſhares, of two, and of one. ε′ If there be no ſon of the ſacerdotal claſs, the eſtate ſhall be divided into ſix parts, and three ſhares ſhall be allotted to the *Cſhatriya*, two to the *Vaiśya*, and one to the *`Súdra*.

Having propounded the diſtribution among three ſons, he proceeds to declare the partition between two.

σ′ Should a *Bráhmana* leave two ſons, one a prieſt, the other a warrior, the prieſt ſhall take four ſhares of the eſtate divided into ſeven parts, and the warrior three. ζ′ Should he leave a ſon of the ſacerdotal, and one of the mercantile claſs, the *Bráhmana* ſhall receive four ſhares of the eſtate divided into ſix parts, and the ſon of the *Vaiśyá* two. ή Should he leave two ſons, one a *Bráhmana*, the other a *Súdra*, let them divide the eſtate into five parts, and let the *Bráhmâna* receive four ſhares, and the *Súdrá* one. ϑ′ Should a prieſt or a ſoldier leave two ſons, one a *Cſhatriya*, the other a *Vaiśya*, let them divide the eſtate into five parts, and let the *Cſhatriya* take three ſhares, and the *Vaiśya* two. ί Should a prieſt or a ſoldier leave two ſons, one a *Cſhatriya*, and the other a *Súdra*, they ſhall divide the eſtate into four parts, and the *Cſhatriya* ſhall receive three ſhares, and the *`Súdra* one. ία Should a prieſt, a warrior, or a merchant, leave two ſons, one a *Vaiśya*, the other

other a *'Súdra,* they ſhall divide the eſtate into three parts, and the *Vaiśya* ſhall receive two ſhares, and the *'Súdra* one.

VISHNU again declares perſpicuouſly another form of diſtribution.

ιβ′ If there be two ſons by the *Bráhmaní* wife, and one by the *'Súdrá,* let the ſons of the *Bráhmaní* take eight ſhares of the eſtate divided into nine parts, and the *'Súdrá* one. ιγ′ But if the ſons of the *'Súdrá* be two, and the offspring of the *Bráhmaní* one ſon, let the *Bráhmana* take four ſhares of the eſtate divided into ſix parts, and the ſons of the *Súdrá* two. ιδ′ On this principle ſhares ſhould be alſo diſtributed in other caſes. An only ſon ſhall ſucceed to the whole eſtate of a *Bráhmana,* provided he were born of a *Bráhmaní, Cſhatriyá,* or *Vaiśyá* wife; to the eſtate of a *Cſhatriya,* provided he were born of a *Cſhatriyá* or *Vaiśyá* wife; to the eſtate of a *Vaiśya,* provided he were born of a *Vaiśyá* wife: a *Súdra* ſucceeds to the eſtate of a *'Súdra.*

If a *Bráhmana* leave an only ſon by one of three wives, a *Bráhmaní* and the reſt, that ſon, being a *Bráhmana,* a *Cſhatriya,* or a *Vaiśya,* ſhall ſucceed to the whole of his father's eſtate. In like manner, the only ſon of a *Cſhatriya* by one of two wives, being either a *Cſhatriya* or a *Vaiśya,* ſhall ſucceed to the whole eſtate; and the only ſon of a *Vaiśya,* provided that ſon be of the commercial claſs; but the only ſon of a *'Súdra* by a *'Súdrá* wife ſhall ſucceed to his father's whole eſtate. The third wife of a *Cſhatriya,* and the ſecond wife of a *Vaiśya,* are not here mentioned, becauſe ſuch marriages are not authorized by the *Véda.*

CLIV.

## CLIV.

VASISHT'HA:—When a *Bráhmana* leaves ſons of the ſacerdotal, military and commercial claſſes, the ſon of the *Bráhmanì* ſhall take three ſhares; the ſon of the *Cſhatriyá*, two; and the reſt ſhall ſhare alike.

The *Retnácara* furniſhes the following gloſs on this text. "The reſt" ſignifies the ſons of the *Vaiśyá* wife. VISHNU and VASISHT'HA, thus propounding a different partition, muſt be reconciled upon the greater and leſs degrees of virtue which diſtinguiſh the parceners. Regularly they ſhould receive allotments of four, three, and two ſhares in the order of the claſſes. The text is thus reconciled to the rule of VISHNU. It is applicable when the ſon of the *Vaiśyá* poſſeſſes few good qualities; and the diſtribution muſt be ſo made when no deducted allotment is given, for it coincides with the text of MENU (CXL).

## CLV.

SANC'HA and LIC'HITA:—Sons produced by women of a different claſs *from the father*, receive ſhares of the heritage in the ſubduple proportion, following the order of the claſſes.

Conſequently, ſhould a *Bráhmana* have male iſſue by four wives *of various claſſes*, his eſtate muſt be divided into fifteen parts, and eight ſhares muſt be allotted to the *Bráhmana*, four to the *Cſhatriya*, two to the *Vaiśya*, and one to the *Súdra*: but if there be no ſon by a *Súdrá* wife, it muſt be divided into fourteen parts, and diſtributed on the ſame principle in the order of the claſſes; or it may be divided into ſeven parts, allotting four ſhares to the *Bráhmana*, two to the *Cſhatriya*, and one to the *Vaiśya*; ultimately there is no difference: if there be no ſon of a *Cſhatriyá* wife, the eſtate ſhould be divided into eleven lots, of which eight belong to the *Bráhmana*, two to the *Vaiśya*, and one

to the *'Súdra*: if there be no son of a *Vais'yá*, eight shares out of thirteen belong to the *Bráhmana*, four to the *Cshatriya*, and one to the *'Súdra*: if there be no son of the *Bráhmanì* wife, the *Cshatriya* shall have four shares out of seven, the *Vais'ya* two shares, and the *'Súdra* one. The estate of a *Bráhmana* must be so distributed. Should a warrior leave three sons by three wives *of various classes*, the distribution is made by dividing the wealth into seven parts; or, if there be no son of a *'Súdrá* wife, by dividing it into six or into three shares; if there be no son of the commercial class, by dividing it into five lots: the wealth of a *Cshatriya* must be so distributed. Should a *Vais'ya* leave two sons, his estate must be divided into three shares; the distribution among three sons has been stated above: *but* if a *Bráhmana* leave two sons, one a priest and the other a warrior, partition shall be made by dividing the estate into twelve, *into six, or into three* shares; or if one be a priest and the other a merchant, by dividing it into ten, or into five lots; or if one be a *Bráhmana* and the other a *'Súdra*, by dividing it into nine parts: in the other cases the partition is similar to that of a *Cshatriya's* estate. Such is the sense conveyed by the text of SANC'HA and LIC'HITA; and it must be understood that this mode of distribution is adopted when the good qualities of the sons decline in the order of the classes. But some lawyers *think they* can maintain the following bad exposition: "Subduple" *they explain*, half *or other part* of a full share: he who has such an allotment, has a certain specifick share of the whole; and the text may consequently coincide with that of NÁREDA (CXLI). The following text concerns the case where superior virtue is found in the inverse order of the classes:

## CLVI.

VRÏHASPATI:—The son of the *Cshatriyá* wife, being elder by birth and superior in good qualities, shall have an equal share with the son of the *Bráhmanì*; and such a son of a *Vais'yá* wife shall have an equal share with the son of the *Cshatriyá*.

The son of the *Cshatriyá* shall have an equal share with the priest,

if

if he be ſenior by birth, and ſuperior in good qualities: ſuch is the conſtruction of one part of the ſentence. If the ſon of the *Vaisyá* be alſo ſenior by birth and ſuperior in virtue, he ſhall have an equal ſhare with the *Cſhatriyá*. Is he here ſuppoſed ſenior by birth and ſuperior in good qualities to the ſon of the *Cſhatriyá*, or to the ſon of the *Bráhmanì*? On the firſt ſuppoſition, if he were alſo ſenior by birth and ſuperior in good qualities to the ſon of the *Bráhmanì*, he would have an equal ſhare with that ſon. The ſecond ſuppoſition is not reaſonable; for it would be unnoticed that he ſhall have an equal ſhare with the ſon of the *Cſhatriyá*, if he be ſenior to him by birth and ſuperior in good qualities; now he ought to have an equal ſhare with him in right of that ſeniority alone, without being alſo ſenior by birth and ſuperior in good qualities to the ſon of the *Bráhmanì*. To this it is anſwered, he ſhall have an equal ſhare with the ſon of the *Cſhatriyá*, if he be ſenior to him by birth and ſuperior in good qualities; but if he be ſenior to the ſon of the *Bráhmanì*, there is no difference. For ſons take one additional ſhare for each gradation, in right of ſuperior claſs; and if *a ſon of* the next inferior claſs be ſuperior in reſpect of age and good qualities, then, mutual equality being reſtored, they ſhall have equal ſhares; but if the ſon of a claſs two degrees lower be ſenior by age and ſuperior in virtue, then, reducing the great ſuperiority of claſs, an equality ariſes with the intermediate tribe; for the parity is only admitted in right of ſuperiority by age and good qualities. If the ſons of the *Cſhatriyá* and *Vaiśyá* be both ſuperior in age and virtue to the ſon of the *Bráhmanì*, but the *Cſhatriya* be inferior to the *Vaiśya*, their claim is equal to that of the *Bráhmana*; if the *Vaiśya* ſurpaſs the *Cſhatriya*, at the ſame time that both are inferior to the *Bráhmana*, his claim muſt be affirmed equal to that of the *Cſhatriya*. It would be a great diſparity, that one who was inferior *in good qualities* to the *Cſhatriya* ſhould receive a great allotment, and that one who ſurpaſſed him ſhould receive leſs. That is now removed by the text cited.

## CLVII.

Baudháyana:—A ſon by a woman of equal claſs, and

and a virtuous ſon by a wife of a claſs one degree lower *than her huſband*, ſhall take the portion of an eldeſt child: a virtuous ſon is the ſupporter of the reſt.

If he only ſurpaſs in virtue, he ſhall take the portion of an eldeſt ſon, that is, a deducted allotment; if he be ſuperior both by age and virtue, he has an equal claim with the claſs next above him, as alſo mentioned by VRĬHASPATI; for the *Cſhatriya* and the reſt cannot have an equal ſhare with the *Brâhmana*, unleſs they receive the portion of an eldeſt ſon. JÍMÚTAVÁHANA obſerves, 'it is thus ſhown, that the ſon of a '*Súdrá* wife may in ſimilar circumſtances be entitled to an 'equal ſhare with the *Vaiśya*.' The portion of an eldeſt ſon, mentioned by VRĬHASPATI (XLV), may be argued as applicable even to this caſe: but the diſcuſſion of this point would needleſsly ſwell the volume.

## CLVIII.

GÓTAMA:—The ſon of a *Bráhmana* by a *Cſhatriya* wife, being endued with good qualities, ſhall have an equal ſhare with the firſt born, excepting the *deducted* portion of an eldeſt ſon.

The *Retnácara* furniſhes this gloſs: excepting the bull and the reſt of the portion deducted for an eldeſt ſon; that is, no deducted allotment, ſuch as the portion of an eldeſt ſon, ſhall be given to him. Conſequently the meaning is, that he ſhall have an equal ſhare with the ſon of the *Bráhmaní*.

## CLIX.

GÓTAMA:—If there be ſons *ſimilarly circumſtanced and* produced by a *Cſhatriya*, and a *Vais'ya*, as the *virtuous* Cſhatriya *would receive an equal* ſhare with the ſon of the *Bráhmaní*, ſo *ſhall the ſon of the* Vaiśya *have* an equal ſhare with the ſon of the *Cſhatriya*;

*Cshatriya*; and *so likewise* if they be sons of a *Cshatriya* father.

The text is thus explained in the *Retnácara*: if the *Bráhmana* leave no son by his *Bráhmanì* wife, but leave two sons *of other tribes*, one by a *Cshatriyá*, the other by a *Vaiśyá*, the son of the *Vaiśyá*, being virtuous, shall have an equal share with the son of the *Cshatriyá*, who is his junior and is deficient in virtue, but without the deducted portion of an eldest son, in like manner as the son of the *Cshatriyá* has, in similar circumstances, an equal share with the son of the *Bráhmanì*. Consequently the share of the son born of the *Bráhmanì*, as mentioned in the preceding text, is *merely* an example. "And *so likewise*, if *they* "*be sons* of a *Cshatriyá* father;" if there be two sons of a *Cshatriyá*, one by a *Cshatriyá* woman, the other by a *Vaiśyá*, and they be similarly circumstanced, the rule of partition is the same.

## CLX.

GÓTAMA:—The very same rule exists in regard to two sons of a *Vaiśya*, one by a *Vaiśya* woman, the other by a *Súdrá*.

"The very same rule" alludes to that which has been delivered by BAUDHÁYANA; it declares a title to the portion of an eldest child: if the son of a woman equal in class be junior, and also deficient in virtue, while another younger brother is virtuous, they shall have equal shares. The *Retnácara*.

That is questionable; for VRĬHASPATI ordains equal participation then only when the son of inferior birth is superior in age and good qualities: it seems advisable to explain the terms *of this text* separately, "elder by birth," and endued with good qualities;" but why should that be done when the same *conclusion* may be obtained by other means? The difficulty is removed by considering the phrase in the text of GÓTAMA, "being en-"dued with good qualities," as a mere instance which includes the notion of one senior in age.

By

By the expreſſion "a hundred ſons," in the text of MENU (LXVI), this meaning is conveyed: if a *'Súdra* have even a hundred ſons, allotments are not diſſimilar, as they are when a *Bráhmana* leaves four ſons. Conſequently ſeniority in right of claſs does not exiſt in this caſe: but what ſhould bar the claim of ſeniority in right of primogeniture and good qualities? For there is no argument to ſuch an effect, and MENU in fact mentions, that a *'Súdra* can have no wife of a different claſs, as a reaſon for equal partition; elſe it would be impertinent to inſert a precept concerning marriage, that a *'Súdra* alone can have no other wife but one of his own claſs, under the title of Inheritance. Accordingly the maxim delivered by GÓTAMA (CLX), that the ſon of a *Vais'yá* by a *'Súdrá* woman ſhall, if virtuous, have an equal ſhare with the ſon of the *Vais'yá* wife, is pertinent. The virtuous *'Súdra* ſhall not receive an additional allotment in token of reſpect, if a ſuperior brother be living: it is proper to affirm, that he can only have ſuch a ſhare with a brother of equal claſs. Thus ſome lawyers expound the law, and SRÍ CRĬSHNA TERCÁLANCÁRA concurs in that opinion.—But VÁCHESPATI BHATTÁCHÁRYA holds, that MENU enjoins equal partition *among the ſons of a 'Súdra*, merely to deny the portion of an eldeſt ſon in right of primogeniture alone, not to deny ſuch an allotment in right of pre-eminent virtue; for VRĬHASPATI propounds the reaſon of it without diſcriminating claſſes, "he is venerable like their father" (XLV). CULLÚCABHATTA, JÍMÚTAVÁHANA, and other authors, deny the deducted allotment in right of primogeniture, but do not notice the allotment for pre-eminent virtue *in the caſe of a 'Súdra.*

The text, which denies any other wife to a *'Súdra* but a woman of his own claſs, may be thus conſidered: "no other wife is "ordained for a *'Súdra*;" that is, no other is ſuggeſted by the *Véda*: it muſt not be aſked, if a *'Súdra*, impelled by inclination, ſhould nevertheleſs marry a woman of the ſacerdotal or other ſuperior claſs, as a *Bráhmana* marries a woman of the ſervile claſs, and a ſon be born of that marriage, what ſhall be his ſhare? Marriages from inclination, or in obedience to the law, are authorized in the direct order of the claſſes, but on no account in the inverſe order. Conſequently, a marriage not authorized either by recorded or by traditional revelation is reprehenſible;

prehensible; and the son of such a marriage shall have no share, as will be hereafter mentioned under the head of Exclusion from Inheritance. The exposition of CULLÚCABHATTA and the rest is accurate.

## CLXI.

VRIHASPATI:—Land received *as the reward of sacred literature*, must never be given to the son of the *Cshatriyá* or other wife of inferior class; even if his father give it to him, the son of the *Bráhmanì* may nevertheless resume it after his father's death.

## CLXII.

*Vrìddha* MENU:—The sons of the *Bráhmanì* shall take the land which descends as a holy heritage; but all the sons by women of twice-born classes shall succeed to the house and field successively inherited from ancestors.

'Land received *as the reward of sacred literature*, is the same 'with land descending as a holy heritage.' This remark of JÍMÚTAVÁHANA is founded on the coincidence of the text of VRĬHASPATI. He thus explains the term used in the text: "holy" alludes to the *Véda*, and signifies the study of it, and knowledge of its sense, by which gifts are obtained. *Neither should this be given to a son of inferior birth*, nor the land which has been obtained through *the* pious veneration *of the giver*, as suggested by MENU; for that is in the nature of a pious oblation.

## CLXIII.

MENU:—To *Bráhmanas* returned from the mansions of their preceptors, let him *(the king)* show due respect;

respect; for that is called a precious unperishable gem, deposited by kings with the sacerdotal class.

'Or, this is forbidden by the one; that by the other. All 'land belonging to a priest is not a holy heritage: for the text 'recognises the claim of all sons by women of twice-born classes 'to the field inherited from ancestors, and only excludes the son 'of a *'Súdrá* woman.'

A distinction is admitted between pious oblation and simple gifts. A donation consists in relinquishment, vesting property in another, after devesting the right of the owner; and that is characterised by the words "I give," or others to that effect: but a pious oblation consists in a grant for use, and is characterised by terms of humble salutation; and a thing which is offered as a pious oblation, must not be appropriated by the giver himself; for the contrary practice occurs in oblation to deities. If the offering be made to inanimate deities, after allowing a period for *supposed* enjoyment *by the idol*, such as one day and night, it must be given to *Bráhmanas*: but if the offering be made to the *Bráhmana* himself, considered as a divinity, it is long enjoyed by him. Such, it is said, is JÍMÚTAVÁHANA's opinion: but that is futile; for, were it true, the property would escheat to the king, after the death of the priest in honour of whom the offering was made: his sons would therefore be unentitled to the succession; and they could not have *even* a contested claim.

Is it not the purpose of a pious oblation, that it shall be enjoyed by him in honour of whom the offering is made? Now that is attained by a single act of fruition; for it is a rule, that the intention of the law, once fulfilled, is completely answered: hence, may not land be resumed by the king on a subsequent day? It should not be objected, that, were it so, why should he not resume it for his own benefit? since the law permits consecrated things to be given to no other, he ought to deliver the offering to a priest; it is therefore improper to resume it for his own benefit. Nor should it be objected, that, because the same person is in this case the priest and the *supposed* divinity, he is only entitled to long possession. Were it so, the right of the priest's son to enjoy it after his demise, as his father's representative,



would

would be contested. Nor should it be objected, that, the priest in honour of whom the oblation was made becoming by death similar to an inanimate deity, the king may deliver it to any priest whomsoever. He and his issue are authorized to enjoy it, as land given to a daughter for her subsistence is enjoyed by her and her issue.

To the question proposed the answer is, why should it not be acknowledged as a gift, for the term demonstrative of respect is irrelevant in any other sense but that of donation? In fact, when provision is made for the maintenance of a daughter, that being given for the support of her and her issue, it is also enjoyed by her descendants *after her demise*. But this case is not similar, for the pious oblation is made in honour of one person alone. To this some reply, acceptance of a thing relinquished, with a view to the merit arising from that relinquishment, constitutes the receipt *of a present*; the relinquishment of a thing with a view to the enjoyment of it *by another person*, whence merit shall accrue *to the offerer*, is an act demonstrating pious veneration: hence relinquishment only is denoted by the respectful term *with which the oblation is presented*; it does not extend so far as to vest property in the other. The fourth case only denoting the purpose of allowing enjoyment to the man in honour of whom the oblation is to be made, he is not donee *as usually signified by the dative case*; but that case is *here* used under another rule. What is offered as a pious oblation, is as it were unowned property; but, being once enjoyed, the possessor gains a title by occupancy, and therefore it shall not be taken by any other person: this is established upon the consequence of the act. But after the demise of the grantee, it shall be enjoyed by his descendants, and no others.

'Or this is forbidden by the one;' from this land, received as a pious oblation, *the sons of inferior birth are* excluded by the one, namely by MENU (CLXII and CLXIII); from land received as a present, they are excluded by the other, namely by VRĬHASPATI. The sense (in the gloss on v. CLXII) is literal; for the term *(brahman)* is explained in the Dictionary of AMERA, *The Védas*, abstract essence, devotion, GOD, BRAHMÀ, Priest, Lord of created beings. The commentator obviates the supposition that 'holy heritage' may intend *generally* the heritage of

of a *Bráhmana*, by adding, 'all land belonging to a prieſt is not a holy heritage.' For the text of MENU (CXLII) declares the general right of all *ſons*, whether *Bráhmanas*, *Cſhatriyas*, or *Vaiśyas*, to ſucceed to the land belonging to a *Bráhmana;* that text being thus explained, the *Bráhmana*, *Cſhatriya*, and *Vaiśya*, ſhall ſucceed to the houſe which has ſucceſſively deſcended from the paternal grandfather to the father, and from him to his ſons. It ſhould not be affirmed, that this text propounds the right of a ſon to ſucceed to the property belonging to a *Bráhmana*, *Cſhatriya*, and *Vaiśya* reſpectively. The property of a *Bráhmana* alone is premiſed in the firſt part of that text (CLXII); and the precept that twice-born men ſhall ſucceed to their fathers would be unmeaning, ſince it muſt be alſo affirmed, that the ſon of a *'Súdra* man inherits land appertaining to his own father; but a *'Súdra* is alone excepted in that text. In proof of this the following verſe is cited by JÍMÚTAVÁHANA.

## CLXIV.

VRĬHASPATI:—The ſon of any twice-born man by a woman of the ſervile claſs is not entitled to partake of his landed property; he who is born in an equal claſs, ſhall take the whole: thus is the law ſettled.

Begotten on a woman of equal claſs, or born in the ſame claſs with his father. Land being mentioned generally, it appears that the ſon of the *'Súdrá* wife ſhall not participate therein, whether it have been received in a preſent or otherwiſe. Land not received in a preſent, is that which is acquired by purchaſe or the like. JÍMÚTAVÁHANA concurs in that expoſition; but it muſt be remembered, that the ſons of the *Cſhatriyá* and *Vaiſyá* wives ſhall have a ſhare of the land which has been acquired by purchaſe and the like.

The phraſe expounded "land which deſcends as a holy heritage," may be explained, land accruing by gift *on ſome account* peculiar to a prieſt; it therefore comprehends the aſſiſting to ſacrifice, teaching the *Védas*, and receiving gifts *from a pure-*

 *handed*

*handed giver.* The delivery of land acquired by purchafe is not peculiar to a *Bráhmana*, but concerns all claffes. The delivery of land acquired by the acceptance of a gift, concerns a *Bráhmana;* for the law declares, " A *Bráhmana* may acquire wealth by affifting to facrifice, by teaching the *Védas*, and by receiving prefents ;" and the *means* of fubfiftence prefcribed to the *Bráhmana* are forbidden to others.

MENU :—A man of the loweft clafs, who through covetoufnefs lives by the acts of the higheft, let the king ftrip of all his wealth, and inftantly banifh.

A *Cfhatriya* fometimes practifes mendicity on failure of all other means of fubfiftence, and merely to preferve life ; but it is not poffible that his fons fhould thereby gain riches. CHANDÉSWARA alfo explains the term ufed in the text (CLXII), land gained by affifting to facrifice and the like. What is received as a pious oblation, is alfo comprehended in the fame term.

Others argue from the text admitting the title of the *Cfhatriyá* and *Vaiśyá* to land inherited by anceftors without any fpecified exception, that the fons of the *Cfhatriyá* and *Vaiśyá* wives fucceed to land which was originally received in a prefent by the paternal grandfather or remoter anceftor, and had devolved on the father in right of affinity. Accordingly land which is acquired by the father, through the acceptance of a prefent, fhall belong to the fon of the *Bráhmanì*, not to the fon of the *Cfhatriyá* or other inferior wife; as is obferved by JÍMÚTAVAHANA. How then do the fons of the *Cfhatriyá* and *Vaiśyá* fucceed to land which was acquired by purchafe? Becaufe there is no prohibition : " all the fons of women of twice-born claffes, &c." is merely a repetition : the former part of the text contains the direct precept. A fecondary fenfe fhould not therefore be admitted ; for it is weaker than the primary fenfe. The laft part of the text of VRĬHASPATI (CLXI), " even if his father give " it to him, &c." fuppofes partition made by the father. Therefore the fon of the *Cfhatriyá*, or other inferior wife, cannot by any means have property, founded on confanguinity, in land which was gained by modes of acquifition peculiar to a prieft.

Then,

Then, muſt it not be conſidered as a waif? Not ſo; for it muſt be affirmed that the father's property was not deveſted, elſe it would not be ſaid that "the ſon of the *Bráhmanì* may reſume it after his father's deceaſe;" for, otherwiſe, even a ſtranger might ſeize it. If his father give it to him out-right for the ſake of the merit *accruing* from gifts, or for protection, or through favour, what ſhall be the conſequence? It becomes the abſolute property of the *Cſhatriyá*, or other inferior ſon; for gift operates the deveſture of the former owner's property; and if none veſted in another owner, it would be a waif. It is not reaſonable to ſay that property is not in this caſe deveſted by donation, for no limitation is on any account admitted to the valid gift of an owner who is not diſabled by inſanity or the like. Thus ſome expound the law.

## CLXV.

DÉVALA:—A *Niſháda*, being the only ſon of a *Bráhmana*, ſhall have a third part of his eſtate; two ſhares ſhall be taken by the kinſman, remote or near, who performs the obſequies for the deceaſed.

2. On failure of kinſmen, thoſe ſhares devolve on the preceptor, or on the pupil, who performs the obſequies; in the utmoſt difficulty *to find an heir*, let thoſe ſhares be allotted to any perſon ſprung from the ſame original ſtock.

A *Niſháda* is born from a *Bráhmana* on a *'Súdrá* wife, as mentioned under the title of Mixed Claſſes *. The whole eſtate being divided into three parts, he ſhall take one part, and *the other* two belong to the near kinſman connected by the funeral cake; or, on failure of him, to the remoter kinſman. The diſtinction between near and remote kinſmen will be explained. It may be thus elucidated: a near kinſman, connected by the funeral cake, is a father, *or his deſcendant*, and ſo forth; and the remoter kinſman is the grandfather's grandfather, and the reſt.



* MENU, Ch. X. v. 8.

He muſt be of the ſame claſs with the deceaſed, elſe he would not be preferable to the ſon. On failure of remote kindred, the preceptor ſucceeds; he alone performs the obſequies, and celebrates the *s'ráddhá.* On failure of him, the pupil. In the utmoſt difficulty, on failure of all heirs from the near kinſman to the pupil, let thoſe ſhares be given to any perſon ſprung from the ſame original ſtock with the father of the *Niſháda.* The *Retnácara*, JÍMÚTAVÁHANA, and the reſt concur in this expoſition; the *Párijáta* adds, this concerns a virtuous *Niſháda.* The object of that remark is to remove the apparent inconſiſtency with the following text.

## CLXVI.

MENU:—The ſon of a *Bráhmana*, a *Cſhatriya*, or a *Vais'ya*, by a woman of the ſervile claſs, ſhall inherit no part of the eſtate, *unleſs he be virtuous; nor jointly with other ſons, unleſs his mother was lawfully married:* whatever his father may give him, let that be his own.

Conſequently this text of MENU relates to the vicious ſon of a *'Súdrá* woman. But it is proper to conſider it as only applicable when there is a ſon of a twice-born claſs; and it thus coincides with the text of the *Mahábhárata* above cited (CXLIII 4): and on this conſtruction the ſon of a *'Súdrá* wife has a ſpecific portion then only when partition is made by his father; but after his father's demiſe, he is excluded from participation, if he have a twice-born brother; if there be none ſuch, he ſhall take a third part: there is no difficulty on this interpretation. Accordingly MENU, having declared partition among ſons of the four claſſes, and, in anſwer to the queſtion, whether a greater portion may be given to the ſon of the *'Súdrá*, on account of his filial piety or the like, when partition is made by the father? having denied that greater portion (CLXVII), proceeds to deny him even the tenth part when partition is made after the death of the father (CLXVI).

## CLXVII.

MENU:—But, whether the *Bráhmana* have ſons, or have no ſons, *by wives of the three firſt claſſes*, no more than a tenth part muſt be given to the ſon of of a 'Súdrá.

This tenth part is ordained when there are four ſons of the four different claſſes; for it correſponds with a former text (CXL). In like manner it is reaſonable that a 'Súdra ſon ſhould receive, in right of a certain degree of virtue, one ſhare of the eſtate divided into ſeven parts and a half; for that coincides with another text (CXXXIX 4). Never is a tenth part only given to the ſon of a 'Súdrá wife, when there is no ſon by the *Bráhmanì*; for that would contradict the text of VISHNU (CLIII). Again; the prohibition contained in a text of VRĬHASPATI (CLXIV) concerns a *Bráhmana*, and relates to partition by a father. Many different rules being laid down according to the difference of claſs, but this containing no ſpecified limitation, land cannot be properly included in the third part which is received by the ſon of a 'Súdrá having no brother *of another claſs*. As for the ſuppoſition that the text of MENU (CLXVI) relates ſolely to the ſon of a 'Súdrá woman not lawfully married, it is erroneous; for the *Mahábhárata* declares, that even the ſon of a 'Súdrá, lawfully married, is not entitled to claim any portion *unleſs it be given by his father* (CXLIII 4). How can the expreſſion, "whether the *Bráhmana* have ſons or have no ſons," be juſtified? for VISHNU* authoriſes a greater allotment than a tenth part, if he have no ſon *by wives of the three firſt claſſes*. A tenth part here intends the ſhare preſcribed for *a ſon of* that claſs, as above mentioned: hence, if the prieſt have no *other* ſons, a third part or the like, to be ſubſtituted in place of the tenth part, *ſhall be allotted* to the ſon by the 'Súdrá. Thus ſome *authors* expound the law.

CHANDÉSWARA, MISRA, CULLÚCABHATTA, VIJNYANÉSWARA,

* I find no text of VISHNU to that effect. Perhaps it may be an error of the tranſcriber writing VISHNU for DE'VALA. T.

swara, and the reſt, explain the text of Menu (CLXVII), whether the prieſt have ſons by wives of twice-born claſſes, or have no ſuch ſons. Lacshmídhara remarks, if the father indulgently give any thing to his ſon by a *'Súdrá* woman, he ſhall not give more than a tenth part. According to this opinion, ſays Chandéswara, the phraſe "a ſon by a woman of the ſervile claſs ſhall inherit no part of the eſtate," muſt ſignify that he ſhall have no part of the inheritance unleſs it be given to him by his father. The gloſs on both lines expreſſes, 'if the father give any thing to his ſon by a *'Súdrá*;' it is not diſtinguiſhed whether a ſhare or an indulgent gift be meant: it muſt therefore be underſtood as intending a ſhare; for, in the caſe of indulgent gifts to other ſons, no ſpecific ſum is ordained: it is eaſy to eſtabliſh the coincidence of this text *with others*, by the equality of his regular ſhare; and it is inſerted in Menu's code, after premiſing the allotment of a ſhare. To reconcile the apparent contradiction of ſaying, that "a ſon by a woman of the ſervile claſs ſhall inherit no part of the eſtate," while it is mentioned both before and after this text, that he ſhall receive ſuch part of the eſtate as is allotted to him by his father, Heláyudha and the *Párijáta* ſupply the text with the words "unleſs given to him by his father." Participation is forbidden by the firſt ſentence (CLXVI), alluding to a ſon very deficient in good qualities, and born of a *'Súdrá* woman lawfully married; it is forbidden by the ſecond ſentence, alluding to a ſon deficient in good qualities, and born of a *'Súdrá* woman not lawfully married. Hence, "whatever his father may give him, let that be his own;" meaning that which his father may give him through favour, whether it be leſs or more than a tenth part. But a father, who has no *other* ſon, muſt give a third part of the remainder, after deducting his own allotment, to a virtuous ſon by a *'Súdrá* woman lawfully married, and he ſhall take the reſidue for himſelf. The very ſame principle ſhould be admitted in partition made after the death of the father. Jimútaváhana conſiders the text of Menu (CLXVII) as forbidding the further participation of one who has already received a tenth part through his father's indulgence. Vijnyánéswara delivers a ſimilar expoſition. Jiténdriya expounds both texts as follows: 'however great his father's partiality, he ſhall have no other portion than

than a tenth part.' According to his interpretation, the text, "no more than a tenth part muſt be given" (CLXVII), appears to relate to what is given through favour. But CULLÚCABHATTA reconciles the apparent contradiction in the texts of MENU (CLXVI and CLXVII), by different caſes according to the degree of virtue, and according as the mother was, or was not, lawfully married.

## CLXVIII.

VRĬHASPATI:—The virtuous and obedient ſon born of a `*Súdrá* woman unto a man who leaves no *legitimate* offspring, ſhall take a *proviſion for his* maintenance, and the kinſmen ſhall inherit the remainder of the eſtate.

'This, ſays CHANDÉSWARA, relates to the ſon of a woman not lawfully married;' for the ſubject is an unmarried woman. Elſe it would contradict the text of DÉVALA above cited (CLXV I).

## CLXIX.

GÓTAMA:—A ſon by a `*Súdrá* woman, born unto a man who leaves no *legitimate* offspring, ſhall, if he be ſtrictly obedient like a pupil, receive a proviſion for his maintenance.

If he be ſtrictly obedient like an apprentice, then ſhall the ſon of a `*Súdrá* woman receive a proviſion for his maintenance, out of the property of his father, who leaves no legitimate iſſue. "Apprentice" ſignifies a pupil. The author of the *Retnácara* has this expoſition: 'the ſon begotten on a `*Súdrá* woman not 'lawfully married, by a man belonging to one of the three firſt 'claſſes, who leaves no ſon by a woman of a twice-born claſs, 'ſhall receive a proviſion for his maintenance, (that is, ſome 'trifle as a ſtock whereon he may earn a livelihood by agricul- 'ture or the like,) provided he be ſtrictly obedient, or ſhow due

'reſpect,

'respect, like a pupil: and whatever had been given to him by 'his father must also be delivered, as ordained in the following 'text.'

## CLXX.

SANC'HA and LIC'HITA:—A son by a `*Súdrá* woman does not succeed to the paternal estate; whatever his father gave him, that alone shall be his share: but let the father also give him a bull and a cow, some black iron, and *any* black grain excepting *tila*.

CHANDÉSWARA also expounds this text as in effect relating to the son of an unmarried `*Sûdrá*. The text of MENU (CLXVII), as some lawyers remark, may be also expounded as relating to the same subject.

## CLXXI.

GÓTAMA:—Sons produced by women in the inverse order of the classes, shall have a similar allotment to that of the son produced by a woman of the servile class.

A son produced by a woman of another class shall have a mere provision for his maintenance, like one produced by a woman of the servile class, if he be strictly obedient to his parent, as a pupil to his preceptor. CHANDÉSWARA.

'Other class' intends mixed classes. This is grounded on the text which expresses, "All children produced by illegal connexions, are declared to have the same duties with those of the servile class." But a *Mùrddhábhishictá* and the rest are not treated as women of the servile class. In another place the same commentator delivers this gloss: 'to sons produced by women in the inverse classes, a subsistence shall be allotted in the same manner in which it is assigned to the son of a `*Sûdrá*, provided they be strictly obedient *to their parents*.' A woman married in the

 inverse

inverse order of the classes is one who is of a class superior to that of her husband, or one who has been espoused by him before another wife of a class superior to her own, a *Cshatriyá* before a *Bráhmaní*. Misra says, 'a son begotten by a *'Súdra* 'or other man of inferior class, on a *Vaiśya* or other woman 'of superior class, shall receive the means of livelihood; that is, 'stock for agriculture and the like, such as a plough, a plough-'share and so forth.' Vishnu propounds the share of a virtuous son begotten by a *Cshatriya* or *Vaiśya* on a *'Súdrá* lawfully married.

## CLXXII.

Vishnu:—A *'Súdra,* being the only son of a twice-born man, shall take half his father's estate; the second half shall be appropriated in the same manner with the estate of one who leaves no male issue.

On this text it is remarked in the *Retnácara*, that a *Cshatriya* or *Vaiśya* is here intended by the term "twice-born man," with an exception to the *Bráhmana*; 'for Dévala ordains the third part for the son of a priest by a woman of the servile class' (CLXV). It might be reconciled by referring the texts to the cases of a virtuous son, and of one deficient in virtue. The ample discussion of this subject would swell the volume unnecessarily; since the marriage of a woman unequal in class is forbidden in the *Cali*-age.

## CLXXIII.

*Vrihat Náredíya puráná*:—Undertaking sea voyages *to circumnavigate the ocean;* the carrying of a water-pot *by a house-holder;* the marriage of twice-born men with damsels unequal in class:

Premising these and other practices, it adds,

The wise have declared, that these practices must be avoided in the *Cáli*-age.

"Undertaking

"Undertaking ſea voyages;" circumnavigating the ocean.—"The carrying of a water-pot;" the carrying of it by a houſeholder, as directed in ancient law, "Two ſacerdotal threads muſt be worn, and a water-pot full of water muſt be carried." The learned ſo expound the text.

*Aditya purána*:– The marriage of twice-born men with damſels not of the ſame claſs; the ſlaughter, in a religious war, of *Bráhmanas*, who are aſſailants with intent to kill:

Premiſing theſe and other parts of law, it proceeds,

Theſe *parts of ancient law* were abrogated by wiſe legiſlators, as the caſes aroſe at the beginning of the *Cali*-age, with an intent of ſecuring mankind from evil:

The injunctions of infallible legiſlators are of equal authority with holy writ.

Does it not appear from the expreſſion, "abrogated by wiſe legiſlators, as the caſes aroſe," that the prohibition was not ſuggeſted by the ſcripture; and is it not conſequently improper? Therefore it is added, "the injunctions of infallible legiſlators, &c." The term *tranſlated* "*injunction*," *literally* ſignifies promiſe; for, amongſt other ſenſes, AMERA ſtates the term *(ſamaya)* as ſynonymous with *ſamvit*, which he explains a promiſe or contract. "Infallible *legiſlators*" are ſuch as are free from all defects. Theſe defects are, natural ignorance, through which, *for example*, the Ganges may be miſtaken for a vulgar ſtream; inadvertency, through which a man may err in regard to the exiſtence of a thing, even though it lay before him; wilful deceit, as when he affirms that a thing is not, though it really be; and weakneſs of organs, which prevents his clear perception of ſmall objects. The words of a man free from theſe defects muſt be reſpected like holy writ; for, not proceeding from a fallible man, they are ſimilar to the precepts of the *Véda*.

## CLXXIV.

Yájnyawalcya:—A ſon begotten by a man of the ſervile claſs on his female ſlave, may receive a ſhare by his father's choice; or, after the death of the father, the brethren ſhall allot him half a ſhare.

"By his father's choice," that is, by the will of his father, he may obtain a ſhare in the diſtribution of the eſtate: this relates to partition made by the father. It is hereby intimated, that a ſhare muſt neceſſarily be given to ſons and other deſcendants of a wife equal in claſs. The ſon of a 'Súdra by a female ſlave, or other 'Súdrá woman not lawfully married, ſhall, with his father's conſent, have an equal ſhare with other ſons.

Jímútaváhana.

Conſequently, this is alſo intimated; if the father ſaid, "let "an equal ſhare be given to this ſon," then the *other* ſons ſhall give him an equal allotment when partition takes place. After the death of the father, *if no ſuch will had been declared*, the brethren, born of a wife legally married, ſhall allot him half a ſhare; that is, half of ſuch ſhare as would have been aſſigned had his mother been legally married. Conſequently a ſon by a female ſlave, not ſuperior in claſs to her 'Súdra maſter, ſhall obtain the moiety of a full ſhare. Such is the opinion delivered in the *Mitácſhará* and *Retnácara*. The ſame legiſlator propounds the rule when there is no ſon by a woman lawfully married.

## CLXXV.

Yájnyawalcya:—Should he have no brother, he ſhall take the whole, unleſs there be a daughter's ſon.

If there be no ſon by a woman lawfully married, nor a daughter's ſon, the ſon of a female ſlave ſhall take the whole eſtate of the 'Súdra father. Such is the expoſition delivered in the *Retnácara*. Misra explains the text ſimilarly. 'Súlapáni,



Raghu-

NANDANA and the reſt expound "a ſhare" (CLXXIV), an equal allotment with the reſt of the brethren. It is conſequently intimated, that an unequal diſtribution, unauthorized by the law, ſhall not be made among the ſons of a woman legally married. But if there be a daughter's ſon, then, ſince he is a legitimate deſcendant, and ſince the ſon of a female ſlave is produced by a woman not legally married, it is proper they ſhould have equal ſhares. Such is the opinion of RAGHUNANDANA; and JÍMÚTAVÁHANA delivers a ſimilar expoſition.

## CLXXVI.

MENU:—A ſon begotten by a man of the ſervile claſs on his female ſlave, or on the female ſlave of his male ſlave, may take a ſhare of the heritage, if permitted: thus is the law eſtabliſhed.

"On the female ſlave of his male ſlave;" on the female ſlave of his ſervant. The *Calpateru.*

CULLÚCABHATTA has a ſimilar gloſs. But CHANDÉSWARA explains "his female ſlave," one who falls within the deſcription of ſlaves made captive under a ſtandard and the reſt *; "the female ſlave of a male ſlave," his female ſlave of ſuch a deſcription, on whom a ſon is begotten by a male ſlave without being married to her. Both may be admitted to participate *in the heritage.* Thus is the law ſettled.

## CLXXVII.

MENU:—A ſon begotten through luſt on a *Súdrá* by a man of the prieſtly claſs, is even as a corpſe though alive, and is thence called *in law* a living corpſe.

This, ſays JÍMÚTAVÁHANA, relates to *the ſon of* a woman not legally married. But CULLÚCABHATTA conſiders it as relating to *the ſon of* a woman lawfully married: being incapable of fulfilling the purpoſe of obſequies for his father, and ſo forth, he is even as a corpſe.

CHAP.

* Book III, Chap. I. v. 33.

# CHAP IV.

ON

# LEGITIMATE

AND

# ADOPTED SONS.

## SECT. I.—*On the several Modes of Filiation.*

WITH the intent of explaining particularly the right of ſons legitimate, or adopted, to ſucceed to their father's eſtate, they are firſt deſcribed,

### CLXXVIII.

MENU :—Of the twelve ſons of men whom MENU, ſprung from the ſelf-exiſtent, has named, ſix are kinſmen and heirs; ſix not heirs, *except to their own father*, but kinſmen.

2. The ſon begotten by a man himſelf *in lawful wedlock*, the ſon of his wife begotten *in the manner before mentioned*, a ſon given *to him*, a ſon made *or adopted*, a ſon of concealed birth *or whoſe real father cannot be known*, and a ſon rejected *by his natural parents*, are the ſix kinſmen and heirs:

 3. The

3. The ſon of a young woman *unmarried*, the ſon of a pregnant bride, a ſon bought, a ſon by a twice-married woman, a ſon ſelf-given, and a ſon by a `*Súdrá*, are the ſix kinſmen, but not heirs *to collaterals.*

MENU ſprung from the ſelf-exiſtent BRAHMA, and firſt of the fourteen MENUS: among thoſe twelve ſons of men whom he has named, the firſt ſix are pronounced kinſmen and heirs to collaterals: the reſult is, that, as kinſmen, they offer the funeral cake and water to *Sapindas* and *Samánódacas*; and as heirs, they ſucceed to the heritage of their collateral relations on failure of male iſſue, as well as to *the eſtate of* their own father. The laſt ſix may not take the heritage of any except their own father; but they participate in his wealth, for it is declared *generally* without any exception, that *ſons* inherit the eſtate of their father (CCXXIII a). When learned prieſts are mentioned as heirs to all perſons *on failure of kin*, then, indeed, conſanguinity is not the ground of their ſucceſſion, *for* there is no other ground but their claim as learned prieſts: theſe, *on the contrary*, are kinſmen, and therefore perform the duties impoſed by that relation, offering water and celebrating other rites. CULLÚCABHATTA.

But MÉDHATIT'HI, explaining the compound uſed in the text by the negative ſuperadded to the appoſition called *dwandwa*, ſays, "ſix are neither heirs nor kinſmen:" they are not heirs, except to their own fathers. That is wrong; for BAUD'HÁYANA mentions them as kinſmen.

## CLXXIX.

BAUD'HÁYANA:—Conſanguinity, *denoted by a common family appellation*, belongs to the ſon of an unmarried girl, the ſon of a pregnant bride, a ſon bought, a ſon by a twice married woman, a ſon ſelf-given, and a ſon of a prieſt by a `*Súdrá*.

And, in fact, YÁJNYAWALCYA, after premiſing the twelve ſons,

ſons, ſays, "on failure of thoſe firſt mentioned, the next in order "give the funeral cake and claim the heritage" (CLXXXIX): hence it is evident, that all may offer the funeral cake for their own fathers; and the difficulty is reconciled by not admitting their right of offering it for any other. How can it follow from the terms of the text (CLXXIX), that they are kinſmen to collaterals? There is no rule for all who partake of the ſame family name offering the funeral cake to collaterals; ſince *it would follow that* one who is not related within the degree of a *Sapinda* might offer it, even though he were an unconnected ſtranger.

## CLXXX.

Baud'háyana:—Participation of wealth belongs to the ſon begotten by a man himſelf *in lawful wedlock*, the ſon of his appointed daughter, the ſon begotten on his wife *by a kinſman legally appointed*, a ſon given, a ſon made *by adoption*, a ſon of concealed birth, and a ſon rejected *by his natural parents*.

This right of ſucceſſion, from which the ſix firſt mentioned are excluded, muſt be underſtood of ſucceſſion to the eſtate of any but their own fathers. Of whoſe family name do the ſix named with the ſon of the body (CLXXX) partake, of their natural, or their adoptive fathers? The anſwer is, they only claim the family of him whoſe ſon each of them becomes; for ſons inferior to theſe, namely the ſon of an unmarried girl and the reſt, claim the family of their adoptive father; why then ſhould not the reſt *have a ſimilar claim?* The ſon of the body, of courſe, belongs to the ſame race *with his father;* and Menu, in ſpeaking of a ſon given, explicitly declares that he muſt never claim the family of his natural father.

## CLXXXI.

Menu:—A given ſon muſt never claim the family



and

and eſtate of his natural father: the funeral cake follows the family and eſtate; but of him who has given away his ſon, the funeral oblation is extinct.

The term "funeral oblation" intends that which is made for a father. If a ſon may not claim the family of his natural father, he may ſurely claim that of his adoptive parent. It is accordingly declared in the *Cálicá purána*, after premiſing "the ſon begotten by a man himſelf in lawful wedlock, the ſon of a wife begotten by an appointed kinſman, a ſon given, a ſon made *by adoption*, and the reſt," that their inveſtiture and other ceremonies muſt be performed by their own family.

## CLXXXII.

*Cálicá purána*:—He, O lord of the earth! on whom the ceremonies ſhould be performed under the family-name of his father, is not deemed a ſon until the ceremony of tonſure have been completed; he becomes the ſon of another, *under whoſe family name it is performed*:

2. Sons given and the reſt, when the ceremonies of tonſure and the like have been performed on them by the *adopter's* own family, are deemed adopted ſons; any other is called a ſlave.

In the firſt text "father" ſignifies the natural parent; "another" ſignifies any other *beſides the natural father*. Affiliation therefore depends on the ceremony of tonſure; it does not require the ſeveral ſolemn rites, from the ſection of the navel-ſtring, until the child be fed with rice: and that ceremony of tonſure is valid, even when performed at the ſeaſon of inveſting the child with the mark of his claſs; but adoption is limited to the fifth year.

## CLXXXIII.

*Cálicá purána* :—But after their fifth year, O king! ſons given and the reſt muſt not be adopted; let the adopter take a boy five years old, and firſt perform a ſacrifice for male offspring.

The ſacrifice named in the text *(putrēſhti)* ſhall be performed, if the adopter maintain a perpetual fire; but *only* an oblation with holy words from the *Véda*, if he do not maintain *ſuch* a fire: this will be explained in its place. If a boy five years old be regularly adopted, but the ceremony of tonſure be not performed, having been deferred, according to the uſage of the family, until the ſeaſon of inveſting the child with the mark of his claſs; then, ſhould the adopter die in the interval, is this ſon qualified to perform his obſequies?

Some argue, from the letter of the text (CLXXXII 2), that, the ceremony of tonſure not having been performed by his *adopter's* own family, his affiliation is null, and therefore he is not qualified to perform obſequies. That is wrong; for the text is propounded to declare void the adoption of a given ſon, on whom the ceremony of tonſure has been performed by the family of his natural father. Elſe, if all the ceremonies, including marriage, which is comprehended in the words "and the like," cannot be celebrated, the affiliation would be invalid, and he would not belong to the family *of his adoptive father;* and conſequently the ceremony of tonſure and of inveſtiture, even though performed in the adopter's family, would be invalid, or would be partly imperfect; and the rites could not be performed at all. Adoption alone conſtitutes affiliation; but the ceremony of tonſure performed by the family, to which he originally belonged, renders it eſſentially invalid, like a needleſs repetition. But this affiliation, *once effected*, is not cancelled by his naming his former family in performing a ſacrifice, or in conſecrating a pool. Birth cauſed by male ſeed and uterine blood is one ground of filiation; the ſecond birth, by inveſtiture and other ceremonies, is equally a ground of filiation, by whomſoever performed. When he who has procreated a ſon gives him to



another,

another, and that child is born again by the rites of initiation, then his relation to the giver ceafes, and a relation to the adopter commences: this birth cannot afterwards become null by his erroneoufly reverting to his original family. The fubject fhall be further difcuffed. Thus fome expound the law. To expatiate would be fuperfluous.

The twelve fons are enumerated in the fame order by MENU and BAUD'HÁYANA, but in a different order by others.

## CLXXXIV.

GÓTAMA:—The fon begotten by a man himfelf *in lawful wedlock*, the fon of a wife *begotten by an appointed kinfman*, a fon given, a fon made *by adoption*, a fon of concealed birth, and one rejected by his natural parents, are fons who inherit property.

2. The fon of an unmarried girl, the fon of a pregnant bride, a fon by a twice-married woman, the fon of an appointed daughter, a fon felf-given, and a fon bought, claim the family of their adoptive fathers, and a fourth part *of the paternal eftate*, if there be no fon begotten in lawful wedlock, nor other *fuperior claimant* *.

## CLXXXV.

VISHNU:—Sons are twelve: the firft is the fon begotten by a man himfelf on his own wife *(or the fon of the body, for this agrees with* VASISHT'HA); the fecond is the fon of a wife, begotten by a man of equal clafs on *a widow duly* appointed: fhe who

* The text was here cited partially; but in fubfequent fections it is quoted entire. T.

who is given in marriage by her father, with a declaration in this form, "her ſon ſhall be my ſon;" and ſhe who, having no brothers, is ſo appointed to raiſe up ſons to her father, though not yet given in marriage, is an appointed daughter, *and conſidered as the third ſon:* the fourth is the ſon of a twice-married woman; the fifth, the ſon of an unmarried girl; the ſixth, the ſon of concealed birth, (he is ſon of him on whoſe wife he was begotten;) the ſeventh is the ſon of a pregnant bride, (and the ſon of a woman eſpouſed while pregnant is ſon of the man who marries her;) the eighth is a ſon given, and becomes the ſon of him to whom he is given by his natural father or mother; the ninth a ſon ſold; the tenth a ſon ſelf-given, (he is ſon of the man to whom he gives himſelf;) the eleventh is a ſon rejected, (being forſaken by his father or mother, he becomes the ſon of him by whom he is received;) the twelfth is a ſon any-how produced irregularly, *(and he is alſo called* `Saudra, *or a ſon by a* `Súdrá.)

Such is the order in which ſons are enumerated by VISHNU; they are enumerated in another order by SANC'HA and LIC'HITA.

## CLXXXVI.

SANC'HA and LIC'HITA:—A ſon rejected *by his father or mother*, the ſon of a pregnant bride, a ſon given *by his natural parents*, a ſon bought, a ſon by a `*Súdrá*, and a ſon ſelf-given; theſe ſix ſons are not heirs *to collaterals, nor to their own father jointly with other ſons.*

2. There is an alternative in reſpect of partition

 among

among those who are heirs: the son begotten in lawful wedlock, the son of a wife begotten *by a kinsman*, the son of an appointed daughter, the son by a woman twice married, the son of a young woman unmarried, and a son of concealed birth, are six kinsmen and heirs, who belong to the same race with their fathers and paternal grandfathers, *who jointly inherit* the estate, and *offer* funeral cakes, and *who claim affinity* with *Sapindas**.

## CLXXXVII.

HÁRÍTA enumerates sons in another order:—A son begotten by a man himself on a faithful wife, the son of his wife begotten *by a kinsman*, a son by a twice-married woman, the son of an unmarried girl, the son of an appointed daughter, and a son of concealed birth, are heirs to kinsmen.

2. A son given *by his parents*, a son bought, a son rejected, the son of a pregnant bride, a son self-given, and a son made *by adoption*, are not heirs to kinsmen †.

## CLXXXVIII.

NÁREDA:—A son begotten by a man himself *in lawful wedlock*, a son begotten on his wife *by a kinsman*, the son of an appointed daughter, the son of an unmarried girl, the son of a pregnant bride, and a son of concealed birth,

2. A son by a twice-married woman, a son rejected, a son

* The latter part was not quoted in this place; but in subsequent sections the text is cited entire. T.

† See the gloss after V. 219.

a ſon given *by his natural parents*, a ſon bought, a ſon made *by adoption*, and a ſon ſelf-given, are declared to be twelve ſons:

3. Among theſe, ſix are heirs to kinſmen; ſix not heirs, but kinſmen; their relative rank correſponds with the order in which they are here named:

4. On the death of the father, they ſucceed in their order to his wealth; on the failure of the beſt and the next beſt, let the inferior in order take the heritage.

## CLXXXIX.

Yájnyawalcya (after enumerating the ſon of the body, the ſon of an appointed daughter, the ſon of a wife *begotten by a kinſman*, the ſon of concealed birth, the ſon of an unmarried girl, a ſon by a twice-married woman, a ſon given *by his natural parents*, a ſon bought, a ſon made *by adoption*, a ſon ſelf-given, the ſon of a pregnant bride, and a ſon rejected,) adds:—On failure of thoſe firſt mentioned, the next in order give the funeral cake, and claim the heritage.

## CXC.

Dévala (after enumerating the ſon of the body, the ſon of an appointed daughter, the ſon of a wife, the ſon of an unmarried girl, a ſon of concealed birth, a ſon rejected, the ſon of a pregnant bride, a ſon by a twice-married woman, a ſon given *by his natural parents*, a ſon ſelf-given, a ſon made *by adoption*, and a ſon bought,) adds:—Theſe twelve ſons are conſidered as offspring *by*

*birth*

*birth or adoption; namely,* ſons begotten by a man himſelf, ſons begotten by another, *but fathered by him,* ſons acquired, and ſons by their own conſent:

2. Among theſe, the firſt ſix are kinſmen and heirs, the other ſix inherit only from their own father; the rank of ſons is diſtinguiſhed by the order in which they are enumerated.

3. All theſe adopted ſons are pronounced heirs of a man who has no ſon by himſelf begotten; but, ſhould a ſon of his body be afterwards born, there is no larger portion for them by reaſon of ſeniority.

4. Such among them as are of the ſame claſs *with that ſon,* ſhall have, as their ſhare, one third of the property, *and two-thirds of it go to him;* but thoſe of a lower claſs muſt live under him with a proviſion of clothes and food only.

## CXCI.

YAMA:—Twelve ſons are named by Sages, who know the principles of things; among theſe ſons, ſix are kinſmen and heirs; ſix not heirs, but kinſmen:

2. The firſt is declared to be the ſon begotten by a man himſelf *in lawful wedlock;* the ſecond, a ſon begotten on his wife *by a kinſman;* the third is the ſon of an appointed daughter: thus have the learned declared the law.

3. The fourth is a ſon by a twice-married woman; the fifth, a ſon by an unmarried girl; the ſixth, a ſon of concealed birth in the huſband's manſion:

these six give the funeral cake, and take the heritage.

4. A son rejected *by his father or mother*, the son of a pregnant bride, a son given *by his natural parents*, a son made *through adoption*, and fifthly a son bought, and *lastly* he who offers himself of his own accord;

5. These six, being of mixed origin, are kinsmen, but not heirs *except to their own father*.

In the *Cálicá purána*, sons are enumerated in the order propounded by MENU.

## CXCII.

The *Cálicá purána*:—The son begotten by a man himself *in lawful wedlock*, the son begotten on his wife *by a kinsman*, a son given *by his natural parents*, a son made *by adoption*, a son of concealed birth, and a son rejected, take shares of the heritage.

2. The son of an unmarried girl, the son of a pregnant bride, a son bought, a son by a twice-married woman, a son self-given, and a son by a *Súdrá*, are six sons who are *contemptible as* dust.

3. On failure of the first respectively, invest the next with filial rights.

(A distinction is subjoined:)—But appoint not to the empire the son of a twice-married woman, nor a son self-given, nor one born of a female slave.

According to NÁREDA, a son rejected *by his natural parents* is competent to inherit, preferably to a son given; but according to VISHNU, a son given is entitled to the heritage, to the prejudice of a son rejected *by his natural parents*. Similar discrepancies in the texts of various Sages will be reconciled in another place.

place. The nature of the affiliation muſt be firſt delivered; for, without underſtanding the character of their filiation, the comparative excellence of theſe ſons cannot be diſcuſſed.

## SECT. II.—*On the Son begotten in lawful Wedlock.*

### CXCIII.

VASISHT'HA:—Twelve ſons are ſhown in holy writ; the firſt is the ſon of the body, begotten by a man himſelf on his own wedded wife.

"Shown in holy writ;" by theſe words the admiſſion of the law is ratified: therefore, *ſays the legiſlator*, we admit the authority of the ſcriptural precept alone *in this inſtance*. "Begotten by a man himſelf" excludes the ſon begotten on his wife by a kinſman; and "wedded wife" excludes the wife ſelf-given, who offers herſelf in theſe words, "I am thine." "The firſt;" ſince he is declared to be firſt in rank, he bars the ſucceſſion of any other. A queſtion which ariſes on this point will be diſcuſſed in treating of Appointed Daughters. "The firſt is begotten by a man himſelf on his own wife" (CLXXXV); a ſon begotten on the wife of another, by a man not duly appointed, falls under the deſcription of a ſon by a twice-married woman; he is ninth in VISHNU's text. This will be explained under its proper head. "Wedded" muſt be ſupplied; for this text coincides with that of VASISHT'HA (CXCIII).

### CXCIV.

MENU:—Him whom a man has begotten on his wedded wife, let him know to be the firſt in rank, as the ſon of his body.

CULLU

CULLÚCABHATTA has another reading of the firſt meaſure *, *but the ſenſe is preciſely the ſame.* He thus expounds the text: "him whom a man begets on his own wife legally married, let him know to be chief in rank, as the ſon of his body."

## CXCV.

DÉVALA:—That ſon who is begotten by a man himſelf on his wedded wife, is called the ſon of his body, chiefly ſuſtaining his father's lineage.

"Chiefly ſuſtaining his father's lineage;" an expreſſion of praiſe, becauſe he continues the race in its ſuperior dignity.

## CXCVI.

BAUD'HÁYANA:—A ſon who was begotten by a man himſelf on his wedded wife of equal claſs, let him know to be the *legitimate* ſon of his body.

"On a wife of equal claſs;" this denotes, that a legitimate ſon is one begotten by a *Bráhmana* on a *Bráhmenì* woman. Accordingly it is inferred, by CULLÚCABHATTA, from the terms of this text, that the ſon of the body is one begotten by the huſband himſelf on a woman of equal claſs.

## CXCVII.

SANC'HA and LIC'HITA:—Let a prieſt take the hand of a woman equal in claſs; the bodies of his anceſtors are born again of her: let him figuratively addreſs his own ſoul, in the perſon of his ſon.

Theſe Sages ſubſequently mention the form of addreſs; "ſpringing from ſucceſſive bodies, &c."

CXCVIII.

* *Swé cſhétrè ſanſcrĭtáyán tu*, inſtead of *ſanſcrĭtáyán tu bháryáyám*.

## CXCVIII.

SANC'HA and LIC'HITA:—" Anceſtors ſeize the in-
" fant fœtus produced from uterine blood; thou,
" my ſoul, art born again, that thou mayeſt here
" ſleep in body.

2. " For the benefits conferred on parents, thou,
" my ſoul, art called ſon; becauſe thou delivereſt
" *(tráyaſé)* from the hell called *put*, therefore
" thou art named ſon *(putra)*."

The meaning is; becauſe the bodies of anceſtors are born again of her, (that is, of the wife equal in claſs,) therefore thou ſpringeſt from ſucceſſive bodies. "Let the father figuratively addreſs his own ſoul, in the perſon of his ſon." Conſequently the ſon is even the ſame with the father: and the father indeed is ſon of ſome perſon, but ſtill the ſame identity exiſts *of him and his father*. "Since thou ſleepeſt in body*, therefore art thou born, although thou beeſt an *immortal* ſoul." Otherwiſe there could be no birth of a ſempiternal ſpirit. Conſequently the ſenſe is, "thy birth is an union with body." "Thou, my ſoul, art called ſon, from the benefits conferred on thy father and mother:" that is, conferring benefits on thy father and mother, thou art called ſon. What benefits? The text proceeds, "becauſe thou delivereſt thy father and mother from *put* (a hell ſo called)." Or, thy father and mother indulgently call thee ſon: it is therefore fit that thou ſhouldſt deliver from the hell called *put* thy father and mother, who confer a benefit on thee by becoming the authors of thy exiſtence, which is obtained for the ſake of thy performing *the ſeveral* rites during purity and impurity, and for the ſake of enjoying the firſt of ſuch rites. They deſign thee ſon, praiſing thee becauſe thou doſt perform this office. The procreation of a ſon upon a woman of equal claſs being alone applauded, it is intimated by SANC'HA and LIC'HITA, that they admit a legitimate ſon to be produced by a woman of equal claſs only.

CXCIX.

* Alluding to the derivation of *puruſha*, animated being, and man eſpecially. T.

## CXCIX.

'Apastamba:—The sons of those who approach a woman of equal class legally espoused and not previously married *to another*, are concerned with religious rites, and may not be excluded from inheritance.

"Not previously married to another;" who has had no former husband; that is, no husband prior to him who has now espoused her; *in other words*, who has had no husband before him. A twice-married woman is thereby excepted. Consequently she who has been even verbally betrothed to another before him, falls not within this description. The term is so expounded in the *Pracá'a* and *Retnácara*. "Legally espoused;" the term is explained in the *Retnácara*, 'wedded by the ceremony of joining hands, as ordained by the law.' Some expound it, such as the law declares a fit match, not being related to his father within the degree of *Sapinda*, or *other prohibited degree of consanguinity*, *or* the like. "Are concerned with religious rites;" with the perpetual fire and the like: consequently these alone can be employed as substitutes in using the sacrificial fire, and in other duties incumbent on the father himself. This is the principal subject of the text. *The legislator adds;* "they may not be excluded from inheritance;" they must not be excluded from the former heritage. Such is the meaning, as explained in the *Retnácara*. These alone succeed to the heritage: consequently, 'Apastamba also declares that son only to be first in rank who is born of a woman of equal class *with her husband*. But there is no son superior in rank to the son begotten in lawful wedlock. If the son produced by a woman of unequal class were considered as a son begotten in lawful wedlock, the epithet "equal in class" would not have been inserted. Yájnyawalcya also describes the son of the body as born of a lawful wife. Misra expounds the term, 'a woman equal in class, and lawfully married.' For, in a gloss on another text of Yájnyawalcya (CCCXCVIII), "wife" *(patní)* is explained one equal in class, and having pre-

 cedence.

cedence. In illuſtration of which, RAGHUNANDANA cites the text of MENU (Book IV. v. XLVI.)

## CC.

YÁJNYAWALCYA:—The legitimate ſon of the body is one who is produced by a lawful wife; the ſon of an appointed daughter is equal to him; and the ſon of a wife is one begotten on her by an appointed kinſman ſprung from the ſame original ſtock *with her huſband*, or by another perſon *duly authorized**.

In the gloſs of the *Dípacalicá*, on this text, it is ſaid, 'the ſon begotten by a man himſelf on a woman of equal claſs, lawfully married to him, is the ſon of his body.' A woman of equal claſs, eſpouſed in a legal form of marriage, is a lawful wife: he who is born of her is the firſt in rank, as the ſon of the body. Theſe commentators, finding texts delivered by various Sages, the ſenſe of which ſeems obvious, affirm, that the ſon of the body is one who is begotten by the huſband himſelf on a woman of equal claſs. But CHANDÉSWARA does not concur in that opinion; becauſe, if that were the caſe, the ſon of a prieſt, by a woman of the military claſs, would not be included among the twelve ſons. It ſhould not be argued, that he will be the twelfth, as deſcribed by VISHNU (CLXXXV.) It is proper to conſider the ſon by a *'Súdrá* as the twelfth, becauſe he is mentioned as ſuch by MENU (CLXXVIII and CLXXVII.) Again; if the ſon produced by a woman of the military claſs, regularly eſpouſed, were the twelfth, he would be inferior to all the reſt; for the twelfth ſon is deſcribed by every legiſlator as the loweſt of all. But the ſon of her whom the law permits to be employed in acts of religion with her huſband, cannot be excluſive of the twelve ſons *enumerated;* nor can he be loweſt of all. The commentator therefore reconciles the ſeeming contradiction, *by ſaying*, "wife equal

* I cite the verſe at large; in the original, the different parts of it are quoted in different ſections, under the heads to which they relate. T.

equal in clafs" here fignifies a woman of a twice-born clafs married to a twice-born man, or a woman of the fervile clafs to a man of the fervile clafs; not a prieftefs alone married to a prieft. The *Párijáta* concurs in this expofition. A fon begotten in lawful wedlock is univerfally confidered as the legitimate defcendant of his maternal grandfather and of his own father; he inherits property, and is evidently competent to perform the *s'ráddha* and other rites. This fubject has been fufficiently treated.

## SECT. III.—*On the Son of an appointed Daughter.*

### ART. I.—*On the Rights of an appointed Daughter, and of her Son.*

He is fecond according to YÁJNYAWALCYA; for, after defcribing the fon of the body as one begotten on a lawful wife, he adds, "the fon of an appointed daughter is equal to him" (CC). BAUDHÁYANA (CLXXX) likewife places him before the fon begotten on a wife *by a kinfman*, and after the fon begotten by a man himfelf *in lawful wedlock*. DÉVALA alfo names the fon of an appointed daughter immediately after the fon of the body.

CCI.

DÉVALA:—The fon of an appointed daughter is equal to him; he fhall inherit, as a fon, the eftate of his father and of his maternal grandfather who leaves no male iffue.

It appears from the text of VRĬHASPATI, that the fon of an appointed daughter is fuperior to the fon begotten on a wife by a kinfman.

 CCII.

## CCII.

Vrĭhaspati :—A ſon given, a ſon rejected, a ſon bought, a ſon made *through adoption*, and a ſon by a *Súdrá ;* theſe, if pure by claſs, and irreproachable for their conduct, are held in a middle degree of eſtimation.

2. The ſon begotten on a wife *by a kinſman*, is contemned by good men ; and [illegible] are the ſon of a twice-married woman, the ſon of a young woman unmarried, the ſon of a pregnant bride, and a ſon of concealed birth.

It follows that the reſt are of ſuperior rank. Now the reſt are the ſon of the body, whoſe pre-eminence is univerſally admitted, and the ſon of an appointed daughter. The ſon ſelf-given is not mentioned in the text : to count him among thoſe of ſuperior eſtimation, becauſe a certain legiſlator has not declared that he is ſomewhat inferior to the ſon of the body, would be improper. The omiſſion will be otherwiſe explained in a ſubſequent ſection.

Náreda (CLXXXVIII) aſſigns the third place to the ſon of an appointed daughter, and the ſecond to the ſon begotten on a wife *by a kinſman ;* and the appointed daughter *herſelf* is conſidered by Vasisht'ha as third in rank.

## CCIII.

Vasisht'ha :—She who has no brothers acquires filiation, reverting to the family of her anceſtors ; the appointed daughter is conſidered as the third ſon, *but* equal to the ſon of the body, for ſhe may perform his duties.

Reverting to the family of her anceſtors ;" ſhe returns to the original relation, that is, ſhe reverts, as a ſon, to the family of her father.

The *Retnácara.*

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A daughter, leaving the family of her father, enters that of her husband, and bears children; afterwards she reverts to the family she had quitted, and acquires filiation, by raising up issue to it. Consequently she is said to revert to the family, because she is bound to perform the duties incumbent on a son; hence she is expressly said to become a son. It follows, that she is competent to inherit. The claim of her son, as suggested by former texts, will be hereafter considered.

## CCIV.

SANC'HA and LIC'HITA:—The son of PRACHÉTAS has said, "the appointed daughter is like a son;" her offspring, being the son of an appointed daughter, shall offer the funeral cake both for his maternal grandfather and for his own father; there is no difference in the benefits conferred by a son and by a daughter's son: from this apprehension, a man should not marry a damsel who has no brother.

"Benefits;" delivering his parent from the hell called *put*. "From apprehension;" from the doubt whether or not her father has taken her as a son. Thus the *Retnácara*. From this apprehension a man, who wishes to contract a marriage should not take a damsel who has no brother. This is one construction of the text.

A daughter appointed to raise up a son, is like unto a son; that is, she is equal to him, because she performs his duties: so says DACSHA, the son of PRACHÉTAS. Her offspring is called the son of an appointed daughter: he shall offer the funeral cake both for his maternal grandfather and for his father. There is no difference between a son and a daughter's son, (that is, between the son of the body and the son of an appointed daughter,) in the benefits conferred by them; as the son of the body delivers his father from the hell called *put*, so does the son of an appointed daughter deliver his maternal grandfather: and further,



since

ſince it is declared that her ſon delivers his maternal grandfather from the hell called *put*, he does not deliver his natural father: therefore, in the doubt whether ſhe be an appointed daughter, let not a bridegroom eſpouſe ſuch a bride, but let him marry a damſel who has a brother. This is the whole meaning.

"Equal to him" (CCI); equal to the ſon of the body. The *Dípacalicá*, in explaining the text of YÁJNYAWALCYA, "the ſon of an appointed daughter is equal to him" (CC), has this remark; 'he ſhall have an equal ſhare with the ſon of the body.' MISRA concurs therein.

## CCV.

The *Brahme purána*:—Such a daughter receives an equal ſhare of the patrimony.

## CCVI.

MENU:—But, a daughter having been appointed to produce a ſon for her father, and a ſon *begotten by himſelf* being afterwards born, the diviſion of the heritage muſt in that caſe be equal, ſince there is no right of primogeniture for a woman.

By ſaying this, MENU ſhows that an appointed daughter may claim the heritage; and in the following text he deſcribes her ſon as becoming a ſon's ſon *in contemplation of law*.

## CCVII.

MENU:—By that male child whom a daughter thus appointed, either by an implied intention, or a plain declaration, ſhall produce from an huſband of an equal claſs, the maternal grandfather becomes in law the ſire of a ſon's ſon: let that ſon

ſon give the funeral cake, and poſſeſs the inheritance.

## CCVIII.

Menu:—Let the ſon of an appointed daughter offer the firſt funeral cake to his mother; the ſecond, to her father; the third, to her paternal grandfather.

In making double oblations*, it is intimated, that a funeral cake is offered to the mother inſtalled in the place of a father, and to the maternal grandfather in the place of a paternal grandfather; but if his natural father have no other ſon begotten in lawful wedlock, he muſt likewiſe offer the funeral cake for him, ſince he is alſo ſon of his natural parent.

## CCIX.

Menu:—The ſon of a daughter, *appointed in the manner directed*, ſhall inherit the whole eſtate of his father, who leaves no *other* ſon†.

Cullúcabhatta expounds "father" his natural parent. He muſt therefore, of courſe, be admitted to preſent two ſets of double oblations; but the anceſtry in his maternal grandfather's line, is the ſame with the anceſtry in the line of the natural father of his natural mother‡. Or, like the ſon of a wife, conſidered as ſon of two fathers, he ſhall uſe two names in offering the ſame cake for a father. Conſequently the maternal grandfather's line



* *Párvana*:—A *s'ráddha* with a double ſet of funeral cakes: three cakes are offered to the father, paternal grandfather, and great grandfather; and three to the maternal grandfather, his father, and his grandfather; and the crumbs of each ſet to the remoter anceſtors paternal and maternal. T.

† The gloſs compels me to alter the tranſlation. See Menu, Ch. IX. V. 131. T.

‡ That is, the ſame who are treated as anceſtors of the male line in one ſet, are alſo treated as anceſtors of the female line in both ſets of double oblations. See the firſt note of this page. T.

line ſhall have two funeral cakes in two different forms: this does not extend to the maternal grandfather's grandfather, for he does not belong to the firſt ſet; but the maternal line, aſcending from the mother, is conſidered in two different lights.

It follows, from what has been ſtated, that the appointed daughter, not her ſon, is equal to a *true legitimate* ſon. The appointed daughter ſhall be deſcribed.

## CCX.

MENU:—The ſon of a man is even as himſelf; and as the ſon, ſuch is the daughter: how then, *if he have no ſon*, can any inherit his property, but a daughter, who is cloſely united with his own ſoul?

Again; the ſon of an appointed daughter is equal to a ſon's ſon. On failure of a ſon of the body, theſe two, *the appointed daughter and her ſon*, ſhall inherit the property, although there be ſons of other deſcriptions; but if a ſon of the body be left, the ſon of the appointed daughter ſhall take, for his ſhare, the ſeventeenth part, mentioned by HÁRÍTA and others (CCXIX). The right of the appointed daughter, and of her ſon, to inherit on failure of a ſon of the body, as mentioned by CULLÚABHATTA, muſt be conſidered as a right to the whole of the heritage, agreeably to the texts of MENU. The right of the ſon produced by an appointed daughter, to an equal ſhare of the heritage, follows from the texts of YÁJNYAWALCYA and others; "the ſon of an "appointed daughter is equal to the ſon of the body" (CC). It ſhould not be argued, that, ſince the text of HÁRÍTA ordains a ſeventeenth part, therefore equal partition is not proper in this caſe; and the equality mentioned merely intends the excluſion of the ſon begotten on a wife *by a kinſman* and other inferior ſons. The ſeeming contradictions are reconciled by referring the text of HÁRÍTA to the ſon of an appointed daughter deficient in virtue: and it is abſolutely neceſſary to conſider ſuch texts as relating to deficiency in virtue; for the *Brahme purána* mentions the fourth part of a ſhare; and various texts ſhow various allotments for the ſon of an appointed daughter. To aſſign an equal ſhare to him, if he be equal in virtue, is therefore proper.

## CCXI.

The *Brahme purána*:—The ſon begotten on a wife *by a kinſman* ſhall obtain a third part as his ſhare; and the ſon of an appointed daughter, a fourth.

Jímútaváhana, Vijnyánéswara, and the reſt, as is remarked by ſome authors, explain the terms by the appoſition called *carmadháreya*, "a daughter appointed to be a ſon;" *inſtead of* "*ſon of an appointed daughter*." But others argue, from the form of appointment as ordained by Menu, that the ſon of the appointed daughter thence appears to become the *adopted* ſon of the maternal grandfather. Marriage with an appointed daughter is cenſured; but if ſhe were conſidered as the ſon of her own father, the marriage of an appointed daughter would not be reprehended, ſince nothing would prevent her ſon remaining as the iſſue of his natural father.

## CCXII.

Menu:—He who has no ſon may appoint his daughter in this manner to raiſe up a ſon for him, *ſaying*: "the male child who ſhall be born from her "in wedlock, ſhall be mine for the purpoſe of "performing my obſequies."

Therefore the ſon of an appointed daughter alone becomes the *adopted* ſon of his maternal grandfather (CCIV).

## CCXIII.

Baud'háyana:—A boy born of a daughter expreſsly appointed *to raiſe up iſſue for her father*, is the ſon of an appointed daughter; any other is *merely* a daughter's ſon.

The participation of an appointed daughter, as mentioned by Menu (CCVI), is acknowledged on the authority of his text,

 it

it does not follow that ſhe becomes a ſon; and the expreſſion of VASISHT'HA, deſcribing her as a ſon (CCIII), is merely a *lax* phraſe: if both were conſidered as ſuch, there would be fourteen deſcriptions of ſons. Nor is there any want of argument on which to ſelect one of two ſenſes in preference to the other; for the form of appointment denotes the filiation of the daughter's ſon, and oblations to anceſtors would fail if it reſpected the daughter: conſequently the ſon of that daughter is directed to offer the firſt funeral cake to his mother, (that is, to offer it, *even* at *Gayá*, before he preſents one to his father;) for the purpoſe of obviating the ſuppoſition that at *Gayá* he muſt perform the *śráddha* for the paternal line, and afterwards perform it for the maternal anceſtors, that order being ordained generally in the *Váyu purána*. Hence it appears that the ſon of an appointed daughter ſhall always firſt perform the *śráddha* for the maternal line. He is called the ſon's ſon of his maternal grandfather, becauſe he is produced from one begotten by that anceſtor. The appointed daughter ſhall only take the heritage if ſhe have no ſon; and high rank is aſcribed to ſuch a daughter, becauſe ſhe may become mother of a ſon *adopted by her father*. The family, claimed by the ſon of ſuch a daughter, is that of his maternal grandfather, *for it is ſo expreſſed* in the text of GÓTAMA (CLXXXIV2); and the text of SANC'HA and LIC'HITA (CLXXXVI) coincides with that of GÓTAMA, ſince the word "father" ſuggeſts the huſband of the wife *on whom a ſon is begotten by a kinſman*, and other *adoptive fathers*, and ſince the ſon of concealed birth is common to both texts. It is intimated by the text of YÁJNYAWALCYA (CC), that the ſon of an appointed daughter ſhall have an equal ſhare with the ſon begotten in lawful wedlock; but he bars the inheritance of every other ſon: elſe the phraſe, "on failure of the firſt of theſe, the next in order ſhall give the funeral cake, and take the heritage" (CLXXXIX), would be inaccurate. It ſhould not be objected, that the equal participation of the appointed daughter alone is propounded by MENU (CCVI), becauſe the mention of an advanced ſhare in right of primogeniture would otherwiſe have been omitted; conſequently the equal participation of her ſon being eſtabliſhed from parity of reaſoning, the expreſſion "ſhall give the funeral cake and poſſeſs the heritage," muſt be explained as ſignifying that he ſhall inherit the whole eſtate *on failure of a*

*ſon*

*ſon begotten in lawful wedlock.* Even though unequal partition were made, it might be queſtioned whether a portion ſhould not be allotted to the firſt-born: for inſtance, the portion of an eldeſt ſon is allotted in right of primogeniture; it may be therefore queſtioned whether the fourth part or the like ſhall not be ſimilarly allotted in her right as an appointed daughter, or in right of her ſon: to obviate this doubt, MENU declares that the diviſion of the heritage muſt be equal; that is, it muſt be made without any allotment in right of primogeniture. Accordingly DÉVALA (CXC 3 and 4) *in ſuch caſes* forbids the allotment of any portion in right of ſeniority.

But others hold, that the text of MENU does not expreſs "he ſhall be my ſon;" but, "he ſhall be mine for the purpoſe of performing my obſequies;" (CCXII). Conſequently the daughter alone is conſidered as his ſon; and her ſon is conſidered as his ſon's ſon; and the deſcendants of her ſon are conſidered as the *remoter* deſcendants of her father. But the natural father of her ſon, and his forefathers, are conſidered as anceſtors in a ſecondary degree, like a maternal grandfather. "He ſhall inherit, as a ſon, the eſtate of his father and maternal grandfather who leaves no male iſſue" (CCI); "as" is employed in the ſenſe of ſimilarity; "who leaves no male iſſue" refers to the word "father." The double ſet of oblations ſhall not be offered by him for his natural father, ſince he is not related to different perſons in the degree of a ſon: for a man appointing his daughter *to raiſe up iſſue for him*, gives her to a ſon-in-law; that huſband in a manner conſents to relinquiſh every right, and her father gives her *to him* merely to be enjoyed: the ſon, produced by her, does not revert to the family of his natural father for any occaſion he may find to claim his ſon. Has not the father, who furniſhes the ſeminal fluids, an equal claim to the ſon produced therefrom, as is expreſſed in the text, "a ſon formed of ſeminal fluids and of blood, proceeds from his father and mother" (Book II, Ch. iv. V. 8)? It ſhould not be objected, that here, as in the caſe of a ſon begotten on a wife *by a kinſman*, the offspring belongs to the owner of the field, not to him who caſt the ſeed. If there be an expreſs agreement, the produce of the ſeed may be claimed by the owner of the field: but in this caſe, although the ſon-in-law knew not that ſhe was appointed to raiſe up iſſue for her father,

ſtill

ſtill her male child is truly the ſon of an appointed daughter. That is intimated by SANC'HA and LIC'HITA (CCIV). To the queſtion propoſed the anſwer is, No; for the matter muſt be ſettled agreeably to the practice which prevails in the caſe of produce, where the intention of the party has been declared in theſe words, "by whomſoever ſeed may be ſown, the produce of this my field ſhall be mine:" in that caſe, if an agreement have been made, the owner of the ſeed ſhall take half the produce; but if no expreſs agreement have been made, the owner of the field ſhall have the whole produce. Or, the practice which ſubſiſts in reſpect to cattle, may be admitted in the caſe of an appointed daughter.

## CCXIV.

MENU:—As with cows, mares, female camels, ſlave girls, milch buffaloes, ſhe goats, and ewes, it is not the owner of the *bull, or other* father, who owns the offspring; even thus is it with the wives of others.

2. They who have no property in the field, but, having grain in their poſſeſſion, ſow it in ſoil owned by another, can receive no advantage whatever from the corn which may be produced.

3. Should a bull beget a hundred calves on cows not owned by his maſter, thoſe calves belong ſolely to the proprietors of the cows: and the ſtrength of the bull was waſted.

4. Thus men, who have no marital property in women, but ſow in the fields owned by others, may raiſe up fruit to the huſbands; but the procreator can have no advantage from it.

5. Unleſs there be a ſpecial agreement between the owners of the land and of the ſeed, the fruit belongs clearly to the land-owner; for the receptacle is more important than the ſeed.

But

But there is this difference, that the connexion *of the produce with the receptacle* is inferior to its connexion with the ſeed.

This appointed daughter is mentioned by MENU ſeparately from the thirteen ſons. She is not male, and therefore ſhe is not placed under the ſame head with ſons. The ſon of an appointed daughter is mentioned by other Sages, as the ſon ſelf-given is omitted by one and noticed by another. According to this opinion, as the ſon's ſon inherits on failure of the ſon, ſo, on failure of the appointed daughter, her ſon *inherits the eſtate*. It ſhould not be objected, that, if two daughters be ſo appointed, and one of them deceaſe, the other would have an equal title with the ſon of the deceaſed daughter. It may be ſo, if authorized by the law.

## CCXV.

VRĬHASPATI:—One alone, namely the ſon of the body, is declared to be owner of the wealth *left by his father*; an appointed daughter is equal to him; but the other ſons ſhall only be maintained.

The text of VASISHT'HA concurs in deſcribing the appointed daughter as affiliated (CCIII). But is not this inconſiſtent with the form of appointment mentioned by VASISHT'HA? for he acknowledges the ſon of the appointed daughter to be the adopted ſon *of her father*.

## CCXVI.

VASISHT'HA:—"This damſel, who has no brother, "I will give unto thee, decked with ornaments; "the ſon, who may be born of her, ſhall be my "ſon."

No; for the ſecond word "ſon" here ſignifies deſcendant; and, ſince the offspring of the daughter is the deſcendant of her father, it follows that ſhe, becoming the root *of that lineage*, is conſidered as ſimilar to a ſon. In fact, the appointed daughter becomes a ſon when the declaration runs in this form, "this daughter ſhall raiſe up offspring to me, as if ſhe were my ſon;" and

and her claim to the family of her father remains unaltered. But her ſon alone is conſidered as the ſon *of his maternal grandfather*, when the declaration runs in this form, " her ſon ſhall be my ſon ;" and in this caſe, her ſon, inſtead of herſelf, belongs to the family of his maternal grandfather. In MENU's opinion, the appointed daughter is not qualified to offer the double ſet of funeral cakes and the like ; for, in fact, ſhe is a woman. The mother, maternal grandmother, and maternal great grandmother, compoſe her ſon's maternal line ; the mother, maternal grandfather, and maternal great grandfather, his paternal line ; and the maternal grandfather and ſo forth, aſcending to the third degree, the line of his maternal grandfather : in ſome caſes, the ſame perſon muſt be acknowledged to hold a double relation. But, according to other opinions, the mother, maternal great grandmother, and maternal grandfather's grandmother, compoſe the maternal line ; the maternal grandfather and ſo forth, aſcending to the third degree, the paternal line ; and there is no maternal grandfather's line, for it is unacknowledged by the law. It ſhould not be argued, that the maternal grandmother is conſidered as a mother, becauſe the following verſe exhibits a daughter appointed with the concurrence of his wife 'SETARÚPÁ, by MENU, ſprung from the ſelf-exiſtent. Since there is nothing to prevent the maternity of the natural mother, the maternity *of another* is merely figurative, like that of a ſtepmother.

*'Srí Bhágavata* :—To RUCHI, O king ! with the conſent of 'SETARU'PÁ, he gave 'ACU'TI, impoſing on her the duty of an appointed daughter, although ſhe had brothers living.

The ſuperiority of the ſon produced by an appointed daughter, compared with the ſon begotten on a wife *by a kinſman*, is founded on his not being procreated by an adulterer. For this cauſe the ſecond place is aſſigned to him by YÁJNYAWALCYA and others : but VASISHT'HA and the reſt aſſign him the third place, ſuppoſing the caſe of his inferiority in virtue, compared with the ſon of a wife begotten *by a kinſman* duly authorized ; but not conſidering him as inferior, becauſe the ſeed and field both appertain

appertain to another: for the right of obtaining offspring from this woman is not forfeited, any more than the property of the owner in a thing pledged for use.

## CCXVII*.

*Brahme puráṅa*:—The son begotten by a man himself *in lawful wedlock*, even though last born, shall enjoy the whole of the estate: let the son of a wife begotten *by a kinsman* obtain a third part as his share; and the son of an appointed daughter, a fourth:

2. The son made *by adoption shall have* a fifth part; the son of concealed birth, a sixth; the son rejected, a seventh; and the son of an unmarried girl, an eighth:
3. The son of a pregnant bride *takes* a ninth *part*; the son bought, a tenth; the son by a twice married woman, the next *share, or an eleventh part*; the son self-given, a twelfth;
4. And the son by a 'Súdrá enjoys a thirteenth part of his father's estate.

How shall the partition be made? Not by allotting to the son of a wife so much as is a third part of the whole estate; to the son of an appointed daughter, a fourth of the whole; to a son made *by adoption*, a fifth of it; and so on progressively down to the son by a 'Súdrá: for, were it so, no share would remain for the son of the body and the rest. Thus, if there happened to be sons of twelve descriptions to inherit an estate of fifteen *suvernas*: and five *suvernas* were given to the son begotten on the wife *by a kinsman*:

* The first verse, a part of which has been already quoted at V. 211, is cited at length in this place; the rest are occasionally quoted in subsequent sections:—I insert the whole for a general view of the shares allotted to the different sons, combining the dispersed quotations, and correcting them from the *Calpa druma*, where the text is cited at full length. T.

*kinsman:* three and three quarters to the ſon of an appointed daughter; three to a ſon made *by adoption;* and two and a half to the ſon of concealed birth; ſomething more than two *ſuvernas* ought to be given to a ſon rejected *by his natural parents:* but this cannot be made good. What then would be the ſituation of the reſt? It ſhould not be ſaid, that, dividing the whole of the wealth into three parts, the ſon of a wife may take one; and next, dividing the reſidue into four parts, the ſon of an appointed daughter may take one ſuch part; and the partition may proceed in this manner. For, after the laſt, namely the ſon by a *'Súdrá,* has taken his thirteenth ſhare, there would be no perſon to take the remainder, nor any fixed rule to determine the ſhare of a ſon begotten in lawful wedlock: and if the ſon of the body take that reſidue only, his ſhare would be very ſmall. Nor ſhould it be argued, that, after the death of the father, the ſon begotten in lawful wedlock ſucceeds to the whole eſtate, but ſhall give the other ſons, if ſuch there be, the ſhares which the law aſſigns to them: but, if there be no ſon of the body, the ſon begotten on a wife by a kinſman ſhall take one part out of the three, and the *collateral* heirs ſhall take the reſidue; or if there be ſons of other deſcriptions, ſhares ſhall be allotted to them, as ordained by the law, out of that reſidue. *On the contrary,* if there be ſons of every deſcription, the reſt have no title to any part of the eſtate, the whole of which is in the firſt place taken by the ſon of the body. The ſeeming difficulty is thus reconciled: if there be a ſon begotten in lawful wedlock, he alone ſhall take the whole: but an only ſon of another deſcription being left, that ſon, if he were begotten on the wife by a kinſman, ſhall take one part out of three; if he be the ſon of an appointed daughter, a fourth part. Such is the order of proceeding. But if there be ſons of many deſcriptions, the texts of SANC'HA and LIC'HITA and the reſt (CLXXXVI, CCXLVII, &c.) are applicable inſtead of the preſent text.

The eſtate ſhall be divided into ten parts for theſe ſons *(namely for thoſe mentioned in the text* CLXXXVI 2. See V. ccxlvii): two ſhares muſt be allotted to the father; two to his ſon begotten in lawful wedlock; three to the ſon begotten on his wife by a kinſman, and to the ſon of his appointed daughter, and one each

each to the *three* others. The firſt term in the text (*vicalpa* or alternative) *here* relates to the rule of partition.

The *Retnácara.*

Kinſmen are thoſe who belong to the ſame race, and who ſhare the duty of offering funeral cakes and water; heirs are ſuch as participate in the eſtate. The lawgiver himſelf explains the words "kinſman" and "heir," "one who belongs to the ſame race with his father and paternal grandfather, &c." The paternal grandfather is mentioned for the ſake of his eſtate *which is to be divided*, and for the ſake of the *párvana* and *śráddha* which are to be performed. The diſtribution of ten ſhares is made by the father for the property left by the paternal grandfather. But after the death of the father, his own acquired property, and, *in his life time*, the reſidue *of it*, after he has taken a conſiderable part for himſelf, muſt be divided into eight ſhares, of which two belong to his ſon begotten in lawful wedlock; one and a half to the ſon of his wife begotten by a kinſman; one and a half to the ſon of his appointed daughter; (*for* it is ſuggeſted, that partition muſt be made without admitting any diſparity between theſe two): and one ſhare each ſhall be allotted to the reſt, namely to the ſon by a woman twice married, to the ſon of a young woman unmarried, and to the ſon of concealed birth. What becomes of the ſon given, the ſon made *by adoption*, and the reſt? It is inferred from the text, that food and raiment only ſhall be allotted to them: and this muſt be underſtood when the ſon given and the reſt are not of equal claſs *with their adoptive father*.

But MISRA remarks, that 'MENU and all other lawgivers 'declare the ſon begotten in lawful wedlock to be heir of the 'whole eſtate, although there be ſons of other deſcriptions; the 'ſame legiſlators alſo mention the allotment of ſhares to thoſe '*other* ſons: this ſeeming contradiction muſt be reconciled by 'ſaying, that if the ſon of the body be virtuous, he alone ſhall 'ſucceed to the whole eſtate; but if he be deficient in good quali- 'ties, and the reſt be virtuous, the eſtate ſhall be diſtributed 'in the mode propoſed.' That is liable to objection; for no ſpecifick ſhare is mentioned in the *Brahme purána*, for a ſon begotten in lawful wedlock but deficient in virtue; and there is no difficulty in explaining the phraſe "ſhall enjoy the whole eſtate" (CCXVII),

(CCXVII), as ſignifying that he ſhall take a full ſhare. "If "there be many ſimilar *claimants*, all ſhare the eſtate." This ſhall be *hereafter* diſcuſſed.

"Claim the family *of their adoptive fathers*" (CLXXXIV 2); they belong to the ſame race; they perform the duties incumbent on a ſon, offering the funeral cake and water and ſo forth, and are therefore deſcribed as claiming *the family of their adoptive fathers*. The ſon of an unmarried girl and the reſt are here deſcribed as claiming the family, to forbid their participation in the eſtate, if there be any one of the others, namely the ſon begotten in lawful wedlock and the reſt *who are mentioned in the firſt text*. They ſhall have a fourth part of the eſtate, *on a partition made* during the life of the father, if there be no ſon of the body or other *ſon of the firſt ſeries*: but, if the father deceaſe leaving no ſon born in lawful wedlock, they ſeverally ſucceed to the whole eſtate in *regular* order. The *Retnácara*.

In the order ſpecified in the ſame text; for he has not mentioned whether the order be that of the words or of the ſenſe; but ſince legiſlators differ on this point, the order ſpecified by them cannot be here adduced.

The form of partition is as follows: when the diſtribution is made by the father, his ſon born in lawful wedlock ſhall take a full ſhare; the ſon begotten on his wife by a kinſman, and other ſons *of the firſt ſeries*, ſhall take a third part of a ſhare; the ſon of an unmarried girl, and others *of the ſecond ſeries*, ſhall have food and apparel only. But if there be no ſon of the body, the ſon of the wife ſhall have a full ſhare, and a ſon given and the reſt ſhall take the third part of a ſhare, but the ſon of an unmarried girl and the reſt ſhall have a maintenance only. Should there be no ſon *of the firſt rank* including one of concealed birth, then the ſon of an unmarried girl and the reſt, if ſuch there be, ſhall all take a fourth part; conſequently the father ſhall have eight times as much, *that is, double what is allotted to the ſon rejected*. But the father being dead, the ſon of a wife begotten by a kinſman, and other ſons of the firſt ſeries, ſhall have a ſhare equal to a third part of what is allotted to the ſon begotten in lawful wedlock; and the ſon of an unmarried girl, and others *of the ſecond ſeries*, ſhall obtain a maintenance only: but, if there be no ſon of the body or the like, the firſt in rank among ſons of the ſecond

ſecond ſeries, who do ſurvive, ſhall take the whole eſtate; but another *inferior* ſon ſhall have a ſhare equal to a third part. The ſon of a wife begotten by a kinſman does obtain a third part, if there be a ſon of the body: but whence is it deduced, that the ſon of a pregnant bride ſhall have a third part, if the ſon of an unmarried girl be *the principal heir?* His third ſhare is deduced from the text of DÉVALA (CXC 4), ſuch participation not being mentioned by GÓTAMA. It ſhould not be argued, (becauſe GÓTAMA deſcribes the ſons *of the firſt ſeries, from the ſon begotten in lawful wedlock*, down to the ſon of concealed birth*, as inheriting property; and the ſon of an unmarried girl, and others *of the ſecond ſeries*, as entitled to a fourth part *of the paternal eſtate*, on failure of ſons begotten in lawful wedlock and the reſt;) that they ought to ſhare equally. Were it ſo, the obſervation in the *Retnácara*, that they ſeverally ſucceed to the whole eſtate in *regular* order, would be impertinent. It is no where ſeen, that a ſon of a wife begotten by a kinſman, and other inferior ſons, ſhare equally with the ſon of the body; for that is *virtually* denied *by a text above cited* (CXC). Or the text of the *Brahme purána* may be only applicable during the life of the father, in this mode: when partition of property left by the paternal grandfather is made by the father, a *ſhare equal to a* third part of half what is received by the father ſhall be allotted to the ſon of his wife begotten by a kinſman, a fourth part of ſuch a moiety to the ſon of an appointed daughter, and one ſuch moiety to his ſon begotten in lawful wedlock; partition may proceed in this form: and the phraſe "ſhall enjoy the whole" may ſignify, ſhall have a full ſhare, *the father receiving two ſhares.* But the father being dead, the ſon begotten on his wife by a kinſman ſhall have an allotment equal to a third, and the ſon of his appointed daughter one equal to a fourth, part of what is received by the ſon begotten in lawful wedlock; and the partition may proceed in this mode. For inſtance, if the father receive twenty-four *ſuvernas*, the ſon of his body ſhall receive twelve; the ſon of his wife begotten by a kinſman, ſix; the ſon of his appointed daughter, four; and the ſon made *by adoption*, three *ſuvernas*, and ſo forth: or the ſon of his wife ſhall receive four; the ſon of his appointed daughter, three *ſuvernas*; and ſo forth.



* Down to the ſon rejected. See the text CLXXXIV.

If there be no ſon begotten in lawful wedlock, but a ſon of the wife begotten by a kinſman, a ſon of an appointed daughter, and a ſon made *by adoption;* in that caſe the ſon of the wife inheriting the whole eſtate as next in ſucceſſion, what ſhare belongs to the ſon of an appointed daughter? It ſhould not be ſaid, he ſhall have a fourth part only, as ſuggeſted by the text (CCXVII). That muſt be underſtood, from the ſubject of the ordinance, to mean only the fourth part of the allotment given to the ſon begotten in lawful wedlock. Nor ſhould it be ſaid, that, the ſon of the wife being advanced to the place of the ſon begotten in lawful wedlock, and the ſon of an appointed daughter and the reſt being each raiſed one ſtep, they ſhall receive a third part and ſo forth. There is no law to that effect. To the queſtion propoſed, the anſwer is: the ſame diſparity of allotments which took place between a ſon of the wife and a ſon of an appointed daughter when there was a ſon of the body, ſhall alſo take place in the preſent inſtance: for example, a ſhare one third leſs than the allotment given to the ſon of the wife ſhall be aſſigned to the ſon of an appointed daughter; ſix *ſuvernas* being received by the ſon of the wife, a ſhare diminiſhed by one third (or two *ſuvernas*), and conſequently amounting to four *ſuvernas, ſhall be allotted to the ſon of the appointed daughter.* The ſame ſhould be underſtood in reſpect of a ſon made *by adoption,* and the reſt; and a ſimilar method may be obſerved, when the ſon of an appointed daughter, or another ſon of lower rank, is principal heir.

The ſon of an appointed daughter is deſcribed in the *Brahme purāna* as inferior in rank to the ſon of a wife begotten by a kinſman; and this muſt be underſtood when the ſon of the wife is procreated by a man of the higheſt rank. He is deſcribed by YAJNYAWALCYA as ſuperior to the ſon of the wife; and this muſt be underſtood when the appointed daughter is given to a bridegroom of the higheſt rank. If both are derived from the higheſt origin, and are both equal in merit, it muſt be held reaſonable, that a third or a fourth part ſhould be equally allotted to each. The text of SANC'HA and LIC'HITA (CCXLVII) is applicable when both are derived from the higheſt origin, and are equal in merit; but the form of diſtribution is there propounded, ſuppoſing no diſparity between them. The very low place aſſigned by GÓTAMA to the ſon of an appointed daughter, is pro-

portionate

portionate to the decline of virtue. It is obſerved in the *Retnácara*, that this allotment of a fourth part (CLXXXIV) ſuppoſes the ſon to be tranſcendently virtuous; the *Brahme purána* ſuppoſes them imbued with bad qualities. But in what reſpect is the rank, or the allotment, ordained by GÓTAMA for the ſon of an appointed daughter, ſuperior to that which is directed in the *Brahme purána?* for the allotment of a fourth part is only ordained on failure of ſons begotten in lawful wedlock, and the reſt, but is allowed in the *Brahme purána*, although there be a ſon of the body or the like, ſince the caſe of failure of ſons begotten in lawful wedlock is not there mentioned, and precedence is there allowed to the ſon of the appointed daughter above the ſon made *by adoption*. It ſhould not be argued, becauſe the ſon of the body is mentioned as taking the whole ſucceſſion, that the ſon of the wife ſhall only have a third part, and the ſon of an appointed daughter a fourth, when partition is made by a father who has no ſon of his body. It is abſolutely neceſſary to limit the meaning of the phraſe "ſhall enjoy the whole;" elſe the father would be deprived of all participation. Accordingly DÉVALA ſays, "ſuch among them as are of the ſame claſs ſhall have, as their ſhare, one third part of the property" (CXC 4). Having premiſed "ſhould a ſon of the body be afterwards born," he propounds a ſhort rule of general import concerning their allotments. It ſhould not be affirmed, that this text bears a different import becauſe the order varies. Partition, varying with different degrees of virtue, being admitted for the ſake of the coincidence with other texts, the ſon given and the reſt, being deficient in virtue, would have a third ſhare, if there be a ſon of the body; and the ſame ſons, being eminent by their good qualities, would have no ſhare; which would be an unjuſt diſparity. Nor ſhould it be affirmed, that the text of the *Brahme purâna* relates to the ſon of a wife begotten by a kinſman, and other ſons unequal in claſs. CÁTYÁYANA declares, that ſons unequal in claſs are only entitled to food and apparel.

## CCXVIII.

CÁTYÁYANA:—A ſon of the body being born, the adopted ſons of the ſame claſs take one third as



their

their portion; but thoſe of a different, *that is, of a lower* claſs, are entitled only to food and raiment.

Is not the particular diſtribution, as mentioned in the *Brahme purána*, inconſiſtent with the allotment of one third part, as ordained by DÉVALA and CÁTYÁYANA? It ſhould not be ſaid, that the precepts of DÉVALA and CÁTYÁYANA relate to the caſe of a virtuous ſon, and the *Brahme purána* to the caſe of a ſon deficient in virtue. Were it ſo, the ſon of the wife and the reſt being naturally equal, it would have been ſaid, "a virtuous ſon ſhall obtain a third part as his ſhare," to ſhow the diſtinction to be founded on good qualities, inſtead of ſaying, "the ſon of a wife begotten by a kinſman ſhall obtain a third part as his ſhare." To the queſtion propoſed ſome reply, a third part is mentioned as the principal allotment, for the ſake of illuſtration. Conſequently the general rule of partition muſt be drawn from the *Brahme purána:* the ſame, to whom the firſt rank is aſſigned in the *Brahme purána* on account of his eminent virtue, is placed in a middle or low rank by another author, ſuppoſing the caſe of his deficiency in virtue. Hence the ſame ſhare which is ordained for a ſon given and the reſt, on the ſuppoſition of their poſſeſſing good qualities, is allotted to the ſon of an unmarried girl and the reſt, if they poſſeſs ſuch good qualities. Such is the difference in the opinions delivered by various Sages. A full ſhare muſt be therefore allotted to the ſon of the body; participation muſt be allowed to the ſon of an appointed daughter; a fourth part of ſuch a ſhare muſt be given to the ſon of a wife begotten by a kinſman; a fifth, to the ſon of a young woman unmarried; a ſixth, to the ſon of concealed birth; a ſeventh, to the ſon rejected by his natural parents; an eighth, to the ſon of a pregnant bride; a ninth, to the ſon by a woman twice married; a tenth, to the ſon given; an eleventh to the ſon ſelf-given; a twelfth, to the ſon made *by adoption;* a thirteenth, to the ſon bought; and a fourteenth, though not expreſsly mentioned, to the ſon by a *Súdrá*, elſe he would be excluded from participation: ſuch is the intention of DÉVALA. The meaning of other legiſlators, ſay theſe lawyers, ſhould be ſimilarly explained. VÁCHES-

PATI

PATI alſo remarks, that other lawyers refer the allotment of a third part, ordained by CÁTYÁYANA, to the caſe of a ſon given, who is tranſcendently virtuous, becauſe it coincides with the allotment directed in the *Brahme purána* for the ſon of a wife begotten by a kinſman. Hence the reſt muſt certainly have different allotments, not all a third part. Conſequently, the remark in the *Retnácara*, that this allotment ſuppoſes ſons tranſcendently virtuous, muſt relate to the ſon of a young woman unmarried, and the reſt.

## CCXIX.

HÁRÍTA:—Dividing the property, let a twenty-firſt part be given to the ſon of a young woman unmarried; a twentieth, to the ſon by a woman twice married; a nineteenth, to the ſon of concealed birth; an eighteenth, to the ſon of a wife begotten by a kinſman; a ſeventeenth, to the ſon of an appointed daughter; and the remainder, to the ſon of the body.

If the father be dead, a twenty-firſt part of the whole property ſhall be given to the ſon of a young woman unmarried; but in his life-time, a twenty-firſt part of the ſhare allotted to the ſon begotten in lawful wedlock. Such is the form of partition ordained by HÁRÍTA. The term employed *(múſhyáyańa)* is explained in the *Retnácara*, ſon of concealed birth. Theſe ſons are mentioned by HÁRÍTA, as occupying the firſt rank (CLXXXVII).

LACSHMÍD'HARA explains the terms of the text laſt cited, " heirs to kinſmen;" that is, they take the heritage of collaterals, ſuch as paternal uncles and the reſt. The term which occurs in that text *(ſahaſádriſhta)* ſignifies a ſon made *by adoption*. This lawgiver allows them food and raiment only, on the ſuppoſition of their belonging to a lower claſs, or on that of their great deficiency in virtue.

According to this legiſlator, the ſon of an appointed daughter is ſecond in rank, for he is ſo placed in the allotment of ſhares. By one authority he is placed in a very low rank, ſuppoſing the

caſe of his great deficiency in good qualities. Conſequently, if the ſon of a young woman unmarried, or the ſon made *by adoption*, be virtuous, then, the ſon of an appointed daughter, being very deficient in good qualities, ſhall not ſucceed to the whole property; but on failure of ſons, *from the ſon of the body*, to the ſon by a twice married woman, he alone ſhall ſucceed to the eſtate. Such is the opinion of GÓTAMA (CLXXXIV). Other opinions muſt be reconciled in a ſimilar manner. It would be uſeleſs to inveſtigate the diſtinctions of degrees of virtue, which muſt depend on very ſubtile reaſoning; ſuch an inquiry would *unneceſſarily* enlarge the volume, and is therefore omitted. But, in fact, the ſon of an appointed daughter is either ſecond or third in rank, according to the degree of virtue by which the ſon of the wife begotten by a kinſman is diſtinguiſhed; for he is ſo placed by MENU, YÁJNYAWALCYA, NÁREDA, VRĬHASPATI, BAUDHÁYANA, VISHNU, HÁRÍTA, DÉVALA, VASISHT'HA, SANC'HA and LICHITA, YAMA, the *Brahme purána*, and the reſt. Conſequently, if there be left both a ſon of the wife begotten by a kinſman, and the ſon of an appointed daughter, he alone who is virtuous ſhall inherit; but if both be equally endued with good qualities, *the ſon of* the appointed daughter ſhall alone inherit, for he was not begotten by an adulterer. It ſhould not be argued, that the ſon of the wife, being produced from the man's own field, is more intimately connected *with his adoptive father*. The father has not loſt his right to obtain offſpring through his appointed daughter; and the ſon of that daughter is *mediately* produced from the man's own field, *the mother of that daughter*. Nor ſhould it be argued, that the ſon of that wife is begotten by one duly appointed, but the ſon of an appointed daughter is begotten by a ſtranger not expreſsly authorized; and therefore the ſon of the wife is more intimately connected with his adoptive father. When the appointed daughter was given in marriage, the ſon-in-law was nominated to raiſe up offſpring; but the ſon of an appointed daughter, deſcribed by MENU, inherits as a ſon's ſon. This brief expoſition may ſuffice.

## CCXX.

MENU: *á*—Between a ſon's ſon and the ſon of *ſuch*

a

a daughter, there is no difference in law; ſince their father and mother both ſprang from the body of the ſame man.

β' By that male child, whom a daughter thus appointed, either by an implied intention, or a plain declaration, ſhall produce from an huſband of an equal claſs, the maternal grandfather becomes in law the ſire of a ſon's ſon; let him give the funeral cake, and poſſeſs the inheritance*.

γ' The ſon, however, of *ſuch* a daughter, who ſucceeds to all the wealth of her father dying without a ſon, muſt offer two funeral cakes, one to his own father, and one to the father of his mother.

## CCXXI.

SANC'HA and LIC'HITA:—Between a ſon, and the ſon *of ſuch an appointed* daughter, there is no difference.

The ſon of an appointed daughter being conſidered as a deſcendant in the male line, there is no difference between a ſon's ſon and the ſon of *ſuch* a daughter; for, the appointed daughter being conſidered as a ſon, her male iſſue is held ſimilar to a ſon's ſon. It is hereby intimated, that, as a ſon's ſon ſucceeds to the heritage on failure of the ſon, ſo does the male child of an appointed daughter ſucceed on failure of her; and he ſhall take a ſhare in right of his mother, if there be a ſon of another deſcription, or if there be another appointed daughter. This text is inſerted by JÍMÚTAVÁHANA and the reſt under the title of Succeſſion to the eſtate of one who leaves no male iſſue, as ſhowing generally, that the ſon of a daughter ſhall take the eſtate of a maternal grandfather who leaves no ſon: this will be diſcuſſed in its place.

"Appointed by an implied intention;" by no expreſs declaration



* Between this and the following verſe, the hemiſtich, which has been inſerted at CCIX, is again cited. T.

tion that ſhe is ſelected to raiſe up a ſon to her father, but thus appointed by an act of the mind unexpreſſed. "By a plain declaration," declared in expreſs words to be thus appointed. "From an huſband of equal claſs," mentioned to exclude a huſband of inferior claſs, for it would be inconſiſtent with common ſenſe to exclude one of ſuperior claſs; and it is recorded, that the daughters of DACSHA (lord of created beings, and ſon of PRACHETAS, the deſcendant of a king named PRĬT'HU,) were married to CASYAPA, and appointed to raiſe up iſſue to their father.

## CCXXII.

MENU:—In this manner DACSHA himſelf, lord of created beings, anciently appointed all his fifty daughters to raiſe up ſons to him, for the ſake of multiplying his race:

2. He gave ten to D'HERMA, thirteen to CASYAPA, twenty ſeven to SÓMA king *of Bráhmanas and medical plants*, after doing honour to them with an affectionate heart.

"In this manner;" in the form for appointing daughters to raiſe up ſons to their fathers: that ſhall be hereafter delivered.—It ſhould not be objected, that this DACSHA is he who ſprang from the toe of BRAHMÁ. He is not recorded in the '*Srí Bhágavata*, as giving his daughters to CASYAPA, but as giving one to 'SIVA*. Nor ſhould it be objected, that the daughters of DACSHA, who ſprang from BRAHMÁ, are mentioned in other works as married to CASYAPA, which therefore coincides with the inſtitutes of MENU. Since the *Bhágavata* may ſerve to reconcile the apparent contradiction, it would be improper to reject its authority.

"Let him give the funeral cake, and poſſeſs the inheritance," (CCXX $\beta'$;) 'as a ſon's ſon' muſt be ſupplied. The gift of the funeral cake is mentioned under the title of Inheritance, to ſhow that

* This DACSHA had ſixteen daughters by PRASUTÍ daughter of MENU. He gave thirteen to D'HERMA, one to AGNI, one to fires collectively, and one to SIVA. See *Bhágavata*, Book 4. The allegory in the marriages of his daughters, and in the fruit of thoſe marriages, is particularly obvious. T.

that ſucceſſion to the heritage is founded on the benefit conferred by offering the funeral cake. The conſequence of this will be explained under the head of Succeſſion to the eſtate of one who leaves no male iſſue. "Dying without a ſon" (CCXX γ): this is explained in the *Retnácara*, and by CULLÚCABHATTA, leaving no ſon by himſelf begotten. That is pertinent on the ſuppoſition that an appointed daughter is conſidered as a ſon. "Who ſucceeds to all the wealth of *his* father" (ibid); of his natural father: the legiſlator proceeds to mention the benefit, in right of which he ſhall inherit the eſtate. Becauſe he offers funeral cakes both to his own father and to his maternal grandfather, therefore ſhall he ſucceed to their wealth. But if his natural father leave another ſon, that heir is firſt entitled to perform the obſequies, and poſſeſs the inheritance: hence this ſon *of an appointed daughter* is a ſecondary and nominal ſon of one who leaves no *other* male iſſue. However, the daughter's ſon alone ſhall perform the obſequies, and ſucceed to the eſtate for his maternal grandfather, who leaves no male iſſue *by ſons*. Such is the expoſition approved by CULLÚCABHATTA. It is reaſonable that he ſhould only inherit if there be no ſons of any other deſcription; but nothing has been expreſsly ſaid by CULLÚCABHATTA on this point. The author of the *Pracáſa*, reading the firſt hemiſtich of the laſt verſe firſt* (CCXX γ), expounds, "father," maternal grandfather; conſidering the maternal grandfather as *adoptive* father of the ſon produced by an appointed daughter, or explaining the word "father," from the relation of the terms, as ſignifying the father of the appointed daughter, he affirms that the phraſe, "ſhall inherit the whole of the eſtate of *her* father," is a repetition. But UDAYACARA holds, that this laſt hemiſtich is delivered as the reaſon *of the precept*: becauſe the ſon of a daughter ſhall obtain the eſtate of her father, who leaves no ſon, therefore ſhall the ſon of an appointed daughter alſo obtain the eſtate of ſuch an anceſtor. CHANDÉSWARA fully concurs in that opinion: but his gloſs, 'leaving ſon by himſelf begotten,' is liable to objection; for a daughter's ſon does not in general ſucceed to the eſtate if there be any adopted ſon, and there is conſequently no ſuch general right, on which that expoſition can be grounded.

CCXXIII.

* That is, he tranſpoſes the firſt hemiſtich of MENU, chap. ix. v. 132, and laſt hemiſtich of v. 131. See tranſlation of MENU, p. 184. T.

## CCXXIII.

MENU :—Not brothers nor parents, but sons, *if living or their male iſſue*, are heirs to the deceaſed; but of him who leaves no ſon, *nor a wiſe, nor a daughter*, the father ſhall take the inheritance; and, *if he leave neither father nor mother*, the brothers*.

On this CULLUCABHATTA thus comments; neither uterine brothers, nor parents, but, on failure of ſons begotten in lawful wedlock, the ſon of a wife begotten by a kinſman, and other ſecondary ſons, are heirs to the *deceaſed* father : this is meant, for the right of a ſon begotten in lawful wedlock is deduced from another text (CCXV). But of one who leaves no ſon properly or improperly ſo called, nor a wife, nor a daughter, the father ſhall take the inheritance, this text is placed after deſcribing ſons of twelve kinds. In effect there is no variance.

## CCXXIV.

VRĬHASPATI :—As ſons, ſo do the daughters of men, ſpring from ſucceſſive bodies : how then ſhould any other human being inherit the property, while a daughter exiſts?

2. Married to a man of equal claſs, virtuous, delighting in ſubmiſſion, ſhe ſhall inherit her father's eſtate, whether ſhe be expreſsly appointed or not, *to raiſe up male iſſue to him.*

3. As ſhe becomes owner of her father's wealth, even though kinſmen exiſt, ſo does her ſon claim the eſtate of his mother and maternal grandfather.

As the father ſprang from the paternal grandfather, and the ſon from the father, ſo does a daughter likewiſe *ſpring from her father*,

* Partially quoted in this place: the laſt hemiſtich is cited after V. 424. T.

*father, who proceeded from her grandfather;* how then ſhould any other, the brother of the deceaſed or the ſon of that brother, inherit the property, for the brother of the deceaſed, or other collateral, ſprang from the grandfather of that daughter, but not from her father. "Married to a man of equal claſs;" not married to a man of inferior claſs, contrary to law. "Whether appointed or not;" appointed by a plain declaration or implied intention: another interpretation will be noticed under the head of Succeſſion to the eſtate of one who leaves no male iſſue. This precept is applicable when an appointed daughter is treated like a ſon, as is ſuggeſted by MENU; for the precepts coincide, ſince VRĬHASPATI deſcribes her as ſimilar to a ſon: but if the ſon of an appointed daughter be conſidered as the adopted child of her father, he is heir in the firſt place. Even though kinſmen, ſuch as brothers and the reſt, do exiſt, her male child is capable of inheriting his mother's property becauſe he is her ſon, and his maternal grandfather's property becauſe he is conſidered as a ſon's ſon.

## CCXXV.

SANC'HA and LIC'HITA:—The daughter ſhall take the female property, and ſhe alone is heir to the wealth of her mother's ſon, *who leaves no male iſſue.*

The firſt part will be explained under the head of Succeſſion to the property of one who leaves no male iſſue. On the latter part, the following gloſs is delivered in the *Retnácara:* by offſpring is here ſignified the ſon of that daughter's mother; if that ſon, born ſubſequently *to her appointment,* die, leaving no male iſſue, that ſiſter alone ſhall inherit on failure of the mother and father. The reaſon is, that ſhe is ſimilar to a brother. But that, it may be ſaid, is liable to objection; for SANC'HA and LIC'HITA conſider the ſon of an appointed daughter, not the appointed daughter *herſelf,* as the adopted ſon of her father: how then can ſhe be ſimilar to an uterine brother? The anſwer is, any ſon, not expreſsly mentioned by any one legiſlator, muſt be underſtood by implication. Elſe he would have propounded the law imperfectly, or another legiſlator would have aſſerted more than the law. Accordingly MENU has not expreſsly noticed partition by

by a father; but he has ſaid, "the father ſhall never make an unequal diviſion among them" (XXIX). In like manner it muſt be inferred, that SANC'HA and LIC'HITA alſo acknowledge the appointed daughter as an adoptive ſon, by admitting a different deſign *in making the appointment.* Then if there be both an appointed daughter and the ſon of an appointed daughter, which of them ſhall poſſeſs the inheritance or perform the obſequies? The appointed daughter alone, for ſhe was begotten by the man himſelf on his lawful wife. It ſhould not be objected, that her claim is weaker by reaſon of her ſex. Upon the authority of the law ſhe is truly conſidered as a ſon, and her ſex is nothing to the purpoſe. Nor ſhould it be argued, that the ſon has a ſuperior claim, becauſe he gives the two funeral cakes which muſt be offered to the late proprietor in the double ſet of oblations. Were it ſo, ſhe would have an inferior claim to that of the ſon given, and to that of any other daughter's ſon; which is not affirmed by any legiſlator. This brief ſtatement of the law may ſuffice.

## ART. II.—*On the Appointment of a Daughter to raise up a Son for her Father.*

"He who has no ſon may appoint his daughter in this man-"ner, to raiſe up a ſon for him," (CCXII). "Who has no ſon," is not mentioned as a requiſite condition, but is merely deſcriptive; for the father of a ſon has no *ſuch cogent* reaſon for appointing his daughter to raiſe up iſſue for him. *Still however he may ſo appoint his daughter:* accordingly it is well known, that MENU, ſon of the Self-exiſtent, and himſelf the propounder of this very text, appointed his daughter to raiſe up iſſue for him, although he had ſons. That is mentioned in the *Srí Bhágavata*, "O king!" (ſee the verſe cited from the *Bhágavata* in the preceding article); the ſpeaker thus addreſſes the king PERICSHIT. On reading the word 'king' in the firſt caſe, it relates to the agent in the ſentence, namely MENU, ſprung from the Self-exiſtent; for he was then lord of the earth. He gave his daughter ACÚTI to RUCHI, ſon of BRAHMÁ, lord of created beings,

"although

"although ſhe had brothers;" for ſhe had two brothers, PRIYAVRATA, and UTTÁNAPÁDA, both kings. "'SATARÚPÁ" was wife of MENU:

Or the term "who has no ſon" (CCXII) may ſignify, who is abſolutely deſtitute of male iſſue. "For the purpoſe of performing my obſequies" (CCXII); the term *(ſwad'há)* ſignifies obſequies, for the *Véda* directs that word to be uſed with rice offered to progenitors: the meaning therefore is, for the purpoſe of performing the *śráddha*. Is not this appointment uſeleſs, ſince all ſons of daughters perform obſequies for their maternal grandfathers? The term muſt be here underſtood in the ſenſe of principal *śráddha;* for it would be otherwiſe unmeaning. Or the word "mine" may ſignify my race; and "male child" may ſignify deſcendant, ſuch as a ſon or remoter deſcendant by males: "from her" bears a cauſal ſenſe. Conſequently the meaning is, that deſcendant who ſhall proceed from her ſhall be mine, ſuſtaining my lineage, and performing obſequies. It follows, that the daughter, being the root whence that child ſprings, is included in her father's lineage; and a ſon's ſon is a deſcendant, as well as a ſon. By the effect of ſuch an appointment, the daughter belongs, as an adopted ſon, to her father's lineage: any other daughter paſſes into the family of her huſband, but this daughter retains her claim to the family of her father.

Upon the reaſon above mentioned, the expreſſion "who has no brother," in the text of VAS'ISHT'HA (CCXVI) is merely deſcriptive; for it is not requiſite to her filiation. Common ſenſe ſhows, that ſhe may be appointed to raiſe up a ſon, without being decked with ornaments; for that is not requiſite to filiation. The ſon of the appointed daughter being alone mentioned as an *adopted* ſon, does it not follow, that, according to this opinion, the appointed daughter is not conſidered as a ſon? No; for that would contradict the precept, "an appointed daughter is equal to the ſon of the body" (CCIII). The ſecond word, "ſon," therefore ſignifies deſcendant; and a ſon's ſon is a deſcendant, as well as a ſon. Or by this form of appointment the ſon of the appointed daughter ſolely becomes a ſon: that the appointed daughter *herſelf* may become a ſon, another form of appointment muſt be uſed. Both muſt be conſidered as intended by VASISHT'HA; elſe the precept would be imperfect: his not having expreſsly men-

mentioned both forms of appointment, is nothing to the purpoſe; for, a ſon given not being mentioned in the text of the *Brahme purána* (CCXVII), ſhall he not obtain the ſame ſhare with others if he poſſeſs ſimilar good qualities? *The declaration may run* in this form: "the ſon who ſhall be born from her ſhall be mine;" or other words may be uſed to the ſame effect.

GÓTAMA:—He who has no male iſſue, may appoint his daughter to raiſe up a ſon for him, making an oblation to fire, and performing the ſacrifice called *prájàpati* (*or* prájàpatya), and declaring, "her offspring ſhall belong to me:" but, accord-cording to ſome, ſhe may be ſimply appointed by an implied intention.

"Who has no male iſſue;" that is, who has no ſon: the meaning has been already explained. "Making an oblation to fire, and performing the ſacrifice called *prájàpatya;*" or performing a ſingle ſacrifice with the legal fire, according to the form ordained in the particular *śác'ha* of the *Véda followed by the family*; or, if no perpetual fire be maintained, worſhipping in the common form, *he may thus appoint his daughter*. Such is the remark of HERIHERA. Conſequently two ſacrifices with two fires are chiefly recommended; on failure of that, a ſingle ſacrifice with the legal fire: and this concerns ſuch as keep a ſacred hearth; but one who maintains not a perpetual fire, may worſhip in a common mode. "Declaring," ſignifies proclaiming. "According "to ſome, ſhe may be ſimply appointed by an implied intention." By ſaying "according to ſome," diſapprobation is intimated; elſe the legiſlator would not have ſaid "declaring, &c." By diſapprobation, inferiority is intimated. It is conſequently ſuggeſted, that a daughter ſo appointed by an implied intention, is inferior to one appointed by a plain declaration. For this very reaſon GÓTAMA has ſtated the ſon of an appointed daughter as not having precedence above the ſon of an unmarried girl and the reſt (CLXXXIV). But others have expreſsly mentioned the ſon of a daughter appointed by a plain declaration, and have aſſigned him precedence above the ſon of an unmarried girl and the

the reſt. According to the degree of good or bad qualities, he muſt be deemed ſuperior or inferior to the ſon of a wife begotten by a kinſman. Thus ſome expound the text. Conſequently, an implied intention, and an expreſs declaration, (after performing the ſacrifice with fire, and that called *prájapatya*, or after ſimple worſhip,) are the forms of appointing a daughter to raiſe up a ſon for her father.

VRĬHASPATI:—GÓTAMA has ſaid, that a daughter is appointed after making an oblation to fire, and performing the ſacrifice called *prájapati* (or prájápatya); but others hold, that a girl who was ſuppoſed to be a ſon whilſt borne in her mother's womb, is an appointed daughter.

"Suppoſed;" concerning whom it was determined that ſhe ſhall be an appointed daughter. The *Retnâcara.*

Some explain the text, ſhe whom her father ſuppoſed to be a ſon, whilſt ſhe was borne in the womb of his wife; in other words, ſhe, of whom it was thought, "this fœtus will be a male child," is an appointed daughter, and equal to a ſon. Though ſhe be in fact a female, her father does not chooſe to conſider her as ſuch, but attributes to her the rank of a ſon, according to his wiſhes. If her father intend, or declare, "her deſcendants ſhall be mine, ſhe is called by VRĬHASPATI an appointed daughter: ſhe is mentioned by VASISHT'HA (CCIII) as equal to the ſon of the body: and ſuch an appointed daughter is intended by MENU. But a daughter who is appointed by a plain declaration after her birth, is meant by DÉVALA and the reſt; and her ſon becomes the adopted child of his maternal grandfather. Different forms are propounded by NÁREDA to place the appointed daughter in the relation of a ſon, and to place the ſon of ſuch a daughter in that relation.

Others hold, that a plain declaration, preceded by a ſacrifice with fire, and by that called *prâjâpatya*, is one form, which GÓTAMA himſelf approves: the ſame form is mentioned by VRĬHASPATI in the firſt half of his text. The mere intention is a ſecond form. By the word "mere," an expreſs declaration and the

the sacrifice are excepted; and that intention is formed as early as the time when the mother's pregnancy becomes known: this second form is not much approved by GÓTAMA; and this same form is mentioned by VRĬHASPATI in the second half of his text.

VISHNU:—A damsel given in marriage by her father *with a declaration in this form*, "the son who shall be born of her shall be my son," is an appointed daughter: and, even though not given according to the form for appointing a daughter to raise up a son for her father, she is considered as such, if she have no brother, *and were appointed by an implied intention.*

"With a declaration" must be supplied in the text. Even though not appointed in that form, *she is considered as an appointed daughter.* On this some argue from the coincidence of the phrase with the text, "let a man espouse a young girl who has a brother, &c." that every son of a daughter who has no brother is the son of an appointed daughter, and first in dignity; the son of an appointed daughter, as described by GÓTAMA, is inferior to him. That is wrong; for doubt is mentioned in the text of SANC'HA and LIC'HITA (CCIV) as the reason for not marrying a damsel who has no brother; but if there be no doubt, such a marriage may be contracted: it follows, that she does not become an appointed daughter. Hence the expression, "even though not given in the form for appointing a daughter to raise up a son for her father," must be explained, even though not given with an express declaration; but "appointed by an implied intention" must be supplied in the text, because it has the same import with that of GÓTAMA. "Who has no brother," is merely descriptive, suggesting the appointment by an implied intention: in general, such an intention can only be entertained by one who has no son.

The *Brahme purána*:—The daughter of one who has no male issue, being appointed a son by an act of the mind, or any where appointed in the presence

ſence of the king, of ſacrificial fire, and of kinſmen,

2. Or *ſuppoſed to be a ſon* ſo long as ſhe was in her mother's womb, or given after the death of her father to a bridegroom with a nuptial preſent for that expreſs purpoſe, muſt be conſidered as an appointed daughter.

3. Such a daughter ſhall take an equal ſhare of the paternal inheritance.

"Appointed a ſon by an act of the mind," is one mode. The appointment mentioned by MENU, and made before the king, before the ſacrificial fire, and before kinſmen, *in this form*, "ſhe is an adoptive ſon, her progeny ſhall be mine," is a ſecond mode, preferable to the former: in the preſence of the king, her father muſt declare, "ſhe is appointed to be my ſon;" he muſt make the ſame declaration before the ſacrificial fire (that is, while performing a ſacrifice), and with holy texts; he muſt alſo make the ſame declaration in the preſence of kinſmen. "Suppoſed to be a ſon ſo long as ſhe was in her mother's womb," is a third mode. Being given to a bridegroom with a nuptial preſent, at the ſame time that her appointment is proclaimed, a daughter, even though given by another perſon after the death of her father, is legally appointed: conſequently a plain declaration to the bridegroom, preceded by a nuptial preſent, is a fourth mode. According to this opinion, the difference is evidently founded on the different form of appointment to place the appointed daughter or her child in the relation of an adopted ſon. The appointment by an act of the mind is the ſame with the ſecond form, mentioned by GÓTAMA. His firſt form is placed ſecond in this text. Hence, ſay theſe lawyers, the texts of GÓTAMA and VRĬHASPATI do not bear the ſame import.

But others affirm, that an appointed daughter, who was ſuppoſed *to be a male child* ſo long as ſhe was in her mother's womb, is conſidered as a ſon. They expound the text as follows: a daughter, mentally treated as a ſon ſo long as ſhe was in her mother's womb, or appointed in the preſence of the king, of ſacrificial fire, and of kinſmen, and given by her guardian, after the death

death of her father, to a bridegroom, with a nuptial present delivered, or not delivered but promised, is an appointed daughter. The first particle "*vá*" must bear the affirmative sense; the second, a disjunctive sense; and the third must signify 'also:' for it is explained by AMERA, as comparative, disjunctive, affirmative, and connective*. Consequently that daughter, who was supposed to be a male child from the time when pregnancy became known, or who is proclaimed *to be an appointed daughter*, before the king, before sacrificial fire, and before kinsmen, and who is given to a bridegroom, by whom a nuptial present has been accepted, or by whom it has been generously refused, is an appointed daughter. She who passed through this whole ceremony, shall have an equal share with the son of the body; but if there be any deviation in the essential points of this formality, she is reduced accordingly to a lower rank. It must be understood, that she is previously proclaimed 'a daughter appointed to be a son.' The allotment of an equal share, as here mentioned, is admitted by MISRA, by the author of the *Dipacalicá*, and the rest. But, according to others, the meaning is, that she shall take a full share, if there be no son of the body. By acceptance of a nuptial present, or by generous acceptance of the damsel without such a present, the natural father *of her child* has relinquished his claim to the son *born of her*. This brief explanation may suffice.

But it should be remarked in this place, that the appointed daughter is considered as a son, that she may take the inheritance; her child is considered as an adoptive son, that he may offer the double and single sets of oblations to ancestors. This is in every respect accurate. Let it not be objected, that there is no ground for this selection in an ambiguous case. A woman is incapable of offering the double set of oblations. There is no difficulty on this exposition.

## SECT. IV.—*On the Son of a Wife.*

He is third in rank according to YÁJNYAWALCYA; for, after mentioning the son of an appointed daughter as second in rank, he adds,

* AMERA is here misquoted: he explains *vá* as comparative and disjunctive, signifying as and or. Some other work has been erroneously quoted in his name. T.

adds, "the ſon of a wife is one begotten on an appointed wife "by a kinſman ſprung from the ſame original ſtock with her "huſband, or by another perſon duly authorized" (CC). "Sprung from the ſame original ſtock" is explained in the *Retnácara*, ſprung from the ſame family. "By another perſon;" by a man of ſuperior claſs. A man of equal claſs, but of another family, is thus excluded; hence no ſon of a wife can be raiſed to a *Bráhmana*, unleſs by a man of the ſame family: if this be objected, the anſwer is, the conſequence is admiſſible. It is accordingly ſaid in the *Dípacalicá*, a ſon begotten on the appointed wife of another who has no male iſſue, by a kinſman within the relation of the funeral cake, or by a man of ſuperior claſs ſprinkled with clarified butter, and obſerving the other forms conſequent to the appointment, is the ſon of a wife.

## CCXXVI.

Menu:—Even the ſon of a wife *duly authorized*, not begotten according to the law *already propounded*, is unworthy of the paternal eſtate, for he was procreated by an outcaſt.

"Not begotten according to the law *already propounded*;" begotten in breach of the rule which appoints either a kinſman related by the funeral cake, or a man of ſuperior claſs. "He is unworthy of the paternal eſtate;" conſequently he does not become in law the ſon of a wife. "For he was procreated by an outcaſt;" the degradation of his natural father is hereby intimated.

## CCXXVII.

Menu:—Either brother, appointed for this purpoſe, who deviates from the ſtrict rule, and acts from carnal deſire, ſhall be degraded, as having defiled the bed of his daughter-in-law, or of his father.

"The ſtrict rule;" that under which a kinſman or a man of higher claſs raiſes up male iſſue. Does it not appear, from the

 expreſſion

expreſſion "as having defiled the bed of his daughter-in-law or of his father," that either brother above mentioned, and no other perſon, does approach the wife: how then can the ſtrict rule be violated, ſince both are kinſmen? and why is it ſaid they ſhall be degraded? A man of equal claſs being mentioned in the text of VISHNU (CLXXXV), one of inferior claſs is excepted: conſequently, if either brother, being inferior in claſs, though related by the funeral cake, approach the wife, he is degraded. But CULLÚCABHATTA expounds "not begotten according to the law," begotten without obſerving the forms preſcribed, ſuch as being ſprinkled with clarified butter and ſo forth. "Who deviates from the rule," he conſiders as bearing the ſame meaning. In this mode, the expreſſion "appointed for the purpoſe," may be fitly taken in a literal ſenſe.

## CCXXVIII.

MENU:—Sprinkled with clarified butter, ſilent, in the night, let the kinſman thus appointed beget one ſon, but a ſecond by no means, on the widow *or childleſs wife.*

"Thus appointed;" the form of appointment is, "beget a ſon on this woman;" or, addreſſed to the woman, "obtain from that man the procreation of a ſon." According to this opinion, it muſt be affirmed that the principal object fails by the want of ſome formality, ſuch as being ſprinkled with clarified butter and ſo forth. The principal object being thus unattained, it muſt be examined whether the begetter be degraded, or the ſon begotten be incapable of inheriting. The following text ſhews, that the ſon of a wife ſhould be obtained through a kinſman:

## CCXXIX.

MENU:—On failure of iſſue by the huſband, *if he be of the ſervile claſs,* the deſired offspring may be procreated, either by his brother or ſome other *ſapinda,* on the wife, who has been duly authorized.

The

The brother of her husband is named in the first instance; on failure of him, another kinsman related by the funeral cake. The desired offspring may be obtained, by a wife duly authorized by her spiritual parents, from a brother of her husband, or from another *sapinda*. "Desired offspring" being mentioned, if a child unfit for the duties *incumbent on a son* be produced, it is permitted to repeat the intercourse for the purpose of obtaining such a son as is to be desired, namely, one capable of his duties. Such is the interpretation of CULLÚCABHATTA. Consequently the term "one," in the expression "beget one son," must signify one male child fit for the duties incumbent on him.

The third twice-married woman, mentioned under the title of Loans and Payment*, is different from this woman: however, she may be considered as a twice-married woman of that description; for the word "given," in the text alluded to (Book IV, v. CLVIII 4), may signify 'entrusted for the procreation of a son.' This sense must be deduced from reasoning: since she is not a woman wilfully libidinous, therefore, being one who had a different husband before, she must fall within the description of a twice-married woman.

"The second is the son of a wife begotten by a man of equal "class on a wife duly appointed" (CLXXXV); a man of equal class here denotes one not inferior in class. Accordingly the procreation of a son by the holy VASISHT'HA, for SAUDASA a king of the solar race, which is familiarly known from the *Mahábhárata* and other works, is vindicated. Alluding to this, the author of the *Dípacalicá* has said, 'or by a man of superior class.'

VISHNU has allotted the second place to the son of a wife, on the supposition of his superior good qualities, as has been already explained. The third place is allotted to the son of an appointed daughter; for that is shown by the order delivered in the *Retnácara*, where it is said, 'after premising the son of the body, the 'son of a wife, of an appointed daughter, of a twice-married 'woman, or of a young woman unmarried, the son of concealed 'birth, the son of a pregnant bride, the son given, bought, self-'given, or rejected, and the son any-how *irregularly* produced.'

## CCXXX.

VASISHT'HA, after mentioning the son of the body:

* I have inserted the text in the fourth book. It is cited in both places. T.

—On failure of him, the ſecond ſhall inherit, namely the ſon of a wife duly authorized.

The text muſt be ſupplied, "begotten on a wife duly authorized." "On failure of him," ſignifies, on failure of one begotten in lawful wedlock. Conſequently, on failure of ſons begotten in lawful wedlock, the ſon of a wife is competent to perform the *śrāddha*, and ſhall take a full ſhare. Such is the opinion of VASISHT'HA: and that is accurate.

## CCXXXI.

MENU:—He who was begotten, according to law, on the wife of a man degraded, or impotent, or diſordered, or *deceaſed*, after due authority given to her; is called the lawful ſon of the wife.

The term uſed in the text *(talpa)* is explained by AMERA, 'bed, brick-houſe, wife.' "On the wife of a man degraded;" if an outcaſt himſelf begot a ſon, he could not inherit, becauſe he likewiſe would be degraded: but, like an impotent man, an outcaſt may authorize his wife *to conceive by another*, provided ſhe have not been enjoyed by the degraded man; elſe, ſince ſhe would be degraded, her ſon alſo would be an outcaſt. The particle "or" is connective, and refers to the word "deceaſed," *which is underſtood*: conſequently, he who was begotten on the wife of a man deceaſed, after due authority given by her huſband *in his lifetime*, or by ſpiritual parents *after his death*, is alſo called the lawful ſon of the wife. "According to law;" ſprinkled with clarified butter and ſo forth. The *Retnácara*.

## CCXXXII.

MENU:—He who keeps the *fixed and moveable* eſtate of his *deceaſed* brother, maintains the widow, and raiſes up a ſon to that brother, muſt give to that ſon, *at the age of fifteen*, the whole of his brother's *divided* property.

A ſhare

A ſhare allotted to brother's wives, although they have no ſons, is mentioned by VASISHT'HA (CXVII); the brother, by whom that allotted ſhare is kept, and by whom the widow is maintained, and who begets a ſon on that widow, muſt deliver the property to him: but if no ſon ſhall be born, all the brothers ſhall take it *as joint property*. This will be explained under the title of Succeſſion to the eſtate of one who leaves no male iſſue.

If the wife of the eldeſt brother be ſo ſituated, ſhall, or ſhall not, the portion of an eldeſt ſon be allotted? The anſwer is, ſince the ſhare is ſet apart, that it may be ultimately received by the nephew, the precept delivered in a text formerly cited (LXXVI 1) muſt be here adduced. But if authority be given in this form, "raiſe up a ſon by any ſuitable man," then, ſince the ſon may poſſibly be procreated by another man, a ſhare ſhould be ſet apart with the portion of an eldeſt child; and if that ſhare be kept by any one younger brother, and the ſon be procreated by him, ſtill he ſhall take an allotment, which includes the portion of an eldeſt child, becauſe it had already become his. Thus ſome lawyers ſolve the queſtion. But that is wrong; for, one who is yet unborn can have no veſted title; and, during the interval, that wealth is ſimilar to unowned property. The wife's ſon, already born, cannot take the portion of an eldeſt child; he ſhall therefore only receive an equal ſhare. But CULLÚCABHATTA conſiders this text as relating to divided brethren: conſequently, when a ſeparated brother dies, his property ſhould be committed, by his widow, who is incapable of guarding it, to any one brother of her huſband: procreating a ſon on that widow, he muſt give the whole of the property to that child.

## CCXXXIII.

MENU:—Should a wife, even though legally authorized, produce a ſon by the brother, or any other *ſapinda*, of her huſband, that ſon, if begotten with *amorous embraces and tokens of* impure deſire, the Sages proclaim baſe-born and incapable of inheriting.

On this CULLÚCABHATTA delivers the following gloſs: if a

 wife,

wife, even though legally authorized by ſpiritual parents, produce a ſon by the brother or other near kinſman of her huſband, or by a man of ſuperior claſs, who obſerves the preſcribed form of being ſprinkled with clarified butter and ſo forth, (for the circumſtances mentioned are merely illuſtrative,) but acts from the impulſe of unchaſte deſire, that ſon is incapable of inheriting, and is baſe born; for he is not competent to perform obſequies and take the heritage: in fact he is begotten by an adulterer. But ſuch a ſon, begotten without *amorous embraces and tokens of* impure deſire, is capable of inheriting. That is declared by NÁREDA; "averting his face from her's, and ſhunning the contact of limb with limb, for the ſake of offspring, that the family may be perpetuated, and not through amorous deſire*." "That the family may be perpetuated;" in that family wherein that future ſon will continue *and perpetuate the race*, or wherein that woman will remain. The meaning is this: one fruit of a wife is connubial joy, another is male iſſue, as declared in the *Cálicá purána*, "a wife affords connubial joy and male iſſue:" ſince progeny is of courſe ſuggeſted by the ſingle term of connubial joy, male iſſue is again expreſsly mentioned by way of alluſion to the ſon legally begotten on the wife *of another* and ſo forth, and for the purpoſe of ſhowing that the act muſt be free from amorous deſire: the brother of a huſband, and others acting as ſubſtitutes, muſt not take that fruit which conſiſts in connubial pleaſure, for the law does not authorize it; they muſt only ſeek that fruit which conſiſts in male offspring. Connubial pleaſure is a certain mutual relation of huſband and wife; it is excited by the contact of mouth and limbs: hence, ſince that particular ſtate which conſtitutes connubial pleaſure muſt be avoided, it follows that the contact of mouth and limbs muſt be ſhunned. That particular ſtate *unavoided* becomes the cauſe of degradation; hence a ſon ſhould be procreated in a legal mode: a man of inferior claſs and ſo forth muſt in this caſe be ſhunned, as a damſel related within the degree of a *ſapinda* and the like is avoided in contracting a marriage. Such is the law.

But ſome inſert the privative *A*, and explain the text, "ſhould a wife, not legally authorized by ſpiritual parents, produce a ſon by the brother, or any other *ſapinda*, of her huſband, that ſon is begotten

* Book IV. v. CXLVIII.

begotten through impure desire, &c." Their exposition is wrong, for the text would be a vain repetition of the following:

## CCXXXIV.

MENU:—The son of a wife not authorized to have issue by another, and the son begotten by the brother of the husband, on a wife who has a son then living, are both unworthy of the heritage; one being the child of an adulterer, and the other produced through mere lust.

Both must be considered as sons of adulterers, and produced through mere lust*. Others, following the gloss of CULLÚCABHATTA on a text above cited (CCXXVI), consider the particle *(vá)* as connective, and interpret the text (CCXXXIII), should a wife, even though duly authorized, produce a son by any other than a brother or *sapinda* of her husband, that son is begotten through impure desire. To conclude, the Sage proceeds to mention a particular rule concerning the son of a wife:

## CCXXXV.

MENU:—But the son *legally* begotten on a wife authorized for the purpose *before mentioned,* may inherit *in all respects, if he be virtuous and learned,* as a son begotten by the husband; since *in that case* the seed and the produce belong of right to the owner of the field.

" On her *(tatra)*;" on such a wife as is suggested by the law, one of inferior class to the procreator, or related to him within the degree of a *sapinda*, and to whom he shows due respect, being sprinkled with clarified butter and so forth. Or the term *(tatra)* may be taken in another sense of the seventh case, as in the example

* I think it unnecessary to alter the translation of this text for the purpose of reconciling it with the commentary. See MENU, Chap. ix, V. 143. T.

ample 'if there be wealth there is eafe;' and the fenfe is, if the circumftances required by the law do exift. A fon fo begotten may inherit *the property*, (for that muft be fupplied in the text,) like a fon of the body begotten by the hufband on his own wife. Whofe property fhall he inherit; the hufband's, or the natural father's? In reply to this queftion the Sage adds, "fince in that cafe the feed and the produce belong of right to the owner of the field." The proprietor of the field becomes owner of the feed, becaufe he begged it: hence the produce belongs to him. Why does not one irregularly begotten on a wife duly authorized, belong to the owner of the field? Therefore does the Sage add, "of right." He is lawfully begotten: but one irregularly procreated is not lawful iffue; hence, though connected with the owner of the field, he is not confidered as his fon, for he is incapable of filial duties: and MENU had properly faid in a former text, "the feed belongs to the landowner."

## CCXXXVI.

MENU:—Whatever man owns a field, if feed conveyed into it by water or wind fhould germinate, that feed belongs to the landowner: the mere fower takes not the fruit.

As feed, fuch as corn and the like, being brought by a ftream of water or current of wind, and falling on the field of another, produces a crop belonging to him, fo feed, or feminal juices, brought by entreaty or the like, and falling on the field, that is, the wife of another, raifes a fon belonging folely to that other.

## CCXXXVII.

BAUDHÁYANA:—The fon begotten by another on the wife of a man deceafed, impotent, or diftempered, after due authority given for that purpofe, is the lawful fon of the wife:

2. He is confidered as the fon of two fathers, claims

claims both families, and may perform the obſequies and take the heritage of both fathers.

The conſtruction is, 'the ſon begotten by another,' namely, by a brother of the huſband and the like. In the compound term, which ſignifies ſon of two fathers *(dwipitá)*, the regular ſuffix is omitted, not being indiſpenſably requiſite after compound words. He claims deſcent from the original ſtock of both. *The word* "obſequies" ſignifies rites performed in honour of anceſtors. The *Retnácara*.

## CCXXXVIII.

YÁJNYAWALCYA:—The ſon begotten by one who has no male iſſue, on the wife of another, after due authority given to him, is conſidered as heir to both, and ſhall preſent the funeral cake to both fathers.

## CCXXXIX.

NÁREDA:—The produce of ſeed ſown in the field of another, with the owner's permiſſion, is conſidered as belonging both to the owner of the ſeed and to the proprietor of the ſoil.

## CCXL.

SANC'HA and LIC'HITA:—The ſon of ANGIRAS has declared, that the offspring belongs to him who married the mother; but US'ANAS *holds*, that the produce of ſeed which is ſown with the conſent both of the owner of the ſeed and of the owner of the field, is ſhared by both.

Two opinions are delivered by SANC'HA and LIC'HITA, as eſpouſed by two different legiſlators. The religious ceremony relative to the mother conſiſts in taking her hand in marriage; to

to him who has done ſo, namely to the owner of the field, belongs the offspring procreated by another. So A'NGIRASA* has ſaid. According to his opinion, this offspring does not belong to the owner of the field. Whatever ſeed is ſown, its produce, or the offspring, which is ſimilar to produce, is ſhared by both, that is, belongs both to the owner of the ſeed and to the owner of the field. So ſays UŚANAS, preceptor of the *Daityas*, and regent of the planet Venus.

## CCXLI.

HÁRÍTA :—The ſon of the wife, *begotten by another* during *the* life *of her huſband*, ſome conſider *as ſon of her huſband alone*, becauſe ſhe was not independent; *but one begotten after his death, they conſider* as the iſſue of two fathers, becauſe the ſeed was not ſown *by her huſband : for* ſoil bears not fruit without ſeed, nor does ſeed germinate without ſoil. They conſider him as the offspring of both, becauſe both appear *to contribute to his birth* : among theſe he is originally the ſon of the procreator: let him offer two funeral cakes in the ſacrifice to progenitors, and celebrate both fathers on each cake: his ſon *ſhall name both* with the ſecond cake; his ſon's ſon with the third; and thoſe *remoter deſcendants*, down to the ſeventh in deſcent, who wipe off the rice with roots of *cuśa*, *ſhall make this offering* for the ſake of *both anceſtors in each of* three degrees.

The *Retnácara* furniſhes the following comment on this text: the huſband being alive, they conſider the ſon of the wife, though begotten by another, as ſon of the huſband alone. Why? Becauſe *the wife* is not independent; (for ſo muſt the text be ſupplied.) After the death of the father, *for whom a ſon is raiſed*, though ſhe remain

* VRI'HASPATI, ſon of ANGIRAS.

remain equally dependent (CCCCLXXVII 2), ſtill they conſider him as a ſon of two fathers. Why? Becauſe *the huſband* did not ſow the ſeed in the field. Even in the caſe of a living huſband, indeed, he is not *ſtrictly* the ſower of the ſeed. The mutual connexion of *certain* events is the cauſe of offspring: therefore does the Sage add, "*for* ſoil bears not fruit without ſeed, &c." both are *ſeverally* conſidered as owner of the ſeed and owner of the ſoil. The term uſed in the text ſignifies ſacrifice to progenitors. "Let him celebrate both fathers on one cake:" let him repeat both names with each oblation; let him mention both fathers with each cake, and ſo forth, according to the oblation preſented. "His ſon *ſhall name both* with the ſecond cake;" that is, his ſon ſhall offer the ſecond ball of rice *for both*. Three, who wipe off the rice with roots of *cuśa*, ſhall celebrate both anceſtors. The term uſed in this gloſs ("as ſon of the huſband alone,') *and which literally ſignifies agent (cartrĭ)*, means huſband; mentioned to obviate the doubt whether this ſon does not belong to both, ſince he is born of the wife, and begotten by the brother of her huſband. This is true, becauſe ſhe is not independent: the wife belongs to the huſband alone; and therefore offspring, obtained through her, belongs excluſively to him.

Is it not ſuperfluous to diſtinguiſh whether the huſband be alive or dead? for a woman is bound by the obligation of dependence on her huſband, even after his deceaſe; elſe a widow might connect herſelf with any man ſhe pleaſed, ſince no one could oppoſe it. It ſhould not be objected, that a widow is reſtrained from ſuch conduct, not through her dependent condition, but by the dread of vice: elſe *(if women were not reſtrained by a ſenſe of duty)*, what ſhould prevent an unmarried girl connecting herſelf with a ſtranger? *The caſes are not parallel;* for, in the inſtance of an unmarried damſel, there is no perſon who can authorize *her incontinence*. The ſeeming difficulty is likewiſe reconciled upon this principle.

The text is read *na dwyámuſhyáyaní am*, not the iſſue of two fathers, inſtead of *dwyámuſhyáyaní am*, iſſue of two fathers. He by whom the ſeed is ſown, is in ſo far her lord; for ſhe has no *real* huſband. Conſequently, after the death of her huſband, ſince there can be no compact that the child ſhall be ſon of both, the offspring does not belong to both. But, during his life, it is

3 poſſible

possible that such an agreement should be made. With a view to this, the legislator says, "during the life of her husband." The negative must therefore have been inserted through negligence. According to the *Retnácara*, "some" is connected with "consider." The son, (that is, the son of the wife's son,) when offering the second ball of rice to his paternal grandfather, shall celebrate both ancestors with each ball. In offering the third cake to the paternal great-grandfather, the son's son (that is the grandson of the wife's son) shall celebrate both ancestors.

Rigid interpreters consider the expression "during the life of her husband" as merely illustrative. They read the text *Yat dwyámushyáyan'am*, and *explain it*, that son of the wife who is thus produced, some consider as son of two fathers. Why? Because *the husband is* not independent; (for so, *they think*, the text must be supplied.) The reason of his wanting independence is subjoined; because the seed was not sown by him. In answer to the question, if the seed be more efficacious *than the soil*, must not the produce belong to the owner of the seed alone, not to the owner of the soil? but if the soil preponderate, must not the produce belong to the owner of the soil alone, not to the owner of the seed? the Sage subjoins the argument on which the produce may be held to belong to both; "for soil bears not fruit without seed, "&c." The construction *of the sentence* refers the word "consider" to the word "some." "Procreator" *alludes to the husband obtaining offspring* by means of his *wife considered as his* field; and *to the natural father obtaining issue* by means of seed. "Celebrate both fathers on one cake," is a secondary case. The term used in the text *(trin áchacshána)* signifies for the sake of *both ancestors in each of* three degrees. NÁREDA and CÁTYÁYANA have noticed both cases. Their text has been already cited (CCXXXIX *repeated at* v. CCXLV.)

## CCXLII.

NÁREDA:—The son of two fathers shall separately offer the funeral cake and water to both, and shall take half a share out of the estate of his natural father, and another half share out of the estate of his mother's husband.

From

From the word "ſeparately," it appears that two funeral cakes ſhall be offered to two fathers. The order in which they ſhould be offered, not being mentioned, is optional. It is obſerved in the *Retnácara*, that this relates to the caſe where the natural father has a ſon begotten in lawful wedlock, and the huſband of the mother alſo has by ſome means obtained male iſſue by himſelf begotten. But a ſon of two fathers ſhall take the whole property of both fathers, if they leave no other ſons (CCXXXVII). This is illuſtrated by the following example:

## CCXLIII.

Funeral cakes muſt be offered to both fathers, and both names be proclaimed with each cake; three balls of rice ſhall be offered to ſix perſons; he who does ſo, errs not.

He commits no offence. The *Retnácara*.

The inveſtiture and other ceremonies muſt only be performed by the huſband of his mother; for he is claimed by him as a ſon. This child derives *a family name* from the primitive ſtock of both fathers, for BAUD'HÁYANA ſays he claims both families (CCXXXVII). In the triple ſet of oblations* to be offered by him, there ſhall be two paternal lines, ſay theſe rigid interpreters; for it is ſimilar to the double ſet.

An apparent contradiction here occurs between the texts of BAUD'HÁYANA and others, and thoſe of MENU and the reſt. It is thus reconciled by CHANDÉSWARA: if the huſband's brother, or other perſon appointed to raiſe up a ſon to the huſband, have male iſſue, then the ſon of the wife belongs to the huſband alone, not to the natural father; but if he procreate the ſon, ſtipulating, by ſpecial compact, that "the child ſhall in this world equally belong to both of us," that child ſhall be ſon of both. MENU himſelf makes this evident.

CCXLIV.

* *Nándìmuc'ha*; a *s'ráddha* on joyous occaſions, in which nine balls of rice are offered to the father, paternal grandfather and great-grandfather, to the maternal grandfather, great-grandfather, and great-great-grandfather, and to the mother, paternal grandmother, and paternal great-grandmother. T.

## CCXLIV.

Menu:—But the owners of the ſeed and of the ſoil may be conſidered in this world as joint owners of the crop, which they agree, by ſpecial compact, in conſideration of the ſeed, to divide between them.

"By ſpecial compact;" by an agreement in this form, "the crop which ſhall be produced ſhall belong to both of us." Amera ſtates the term *(abhyupagama)* as ſynonimous with compact or agreement.

## CCXLV.

Cátyáyana:—The produce of ſeed ſown in the field of another, with the owner's permiſſion, is conſidered as belonging both to the owner of the ſeed and to the owner of the ſoil.

Vrĭhaspati (CCII), mentioning with ſcorn the ſon of a wife and the reſt, becauſe the mother is unfaithful, alludes to the ſon who is generated by a wife and brother proceeding with amorous blandiſhment, in oppoſition to the conduct preſcribed. The ſon ſelf-given is included by him in the deſcription of ſons rejected, or of thoſe *who are* made *by adoption.*

## CCXLVI.

Vrĭhaspati:—But other ſons, namely the ſon of the wife and the reſt, ſhall reſpectively ſhare a fifth, a ſixth, and a ſeventh part.

"The ſon of the wife and the reſt," namely the ſon of the wife, the ſon of a young woman unmarried, and the ſon of a twice-married woman, ſhall reſpectively ſhare, in the order in which they are mentioned, a fifth, a ſixth, and a ſeventh part.

The *Retnácara.*

Hárita directs, that an eighteenth part ſhall be given to the ſon

ſon of a wife begotten by a kinſman (CCXIX); the *Brahme purána* allots a third part to him (CCXVII); and SANC'HA and LIC'HITA direct another diſtribution.

## CCXLVII.

SANC'HA and LIC'HITA:—Three ſhares ſhall be allotted to the ſon of a wife begotten by a kinſman, and to the ſon of an appointed daughter; and one to each of the reſt *.

The form of diſtribution muſt be underſtood in the mode already explained *in the preceding ſection.* If *his birth and conduct be* irreproachable, it is agreed by all that he is heir to his *adoptive* father and to kinſmen. But the ſon of a wife, begotten by a kinſman without due authority, ſhall only inherit the eſtate of his natural father (CCXLVIII). Such a ſon is the ſame with the twelfth ſon deſcribed by VISHNU (CLXXXV).

## CCXLVIII.

If a ſon begotten in lawful wedlock, and a ſon of the wife begotten by a kinſman, contend for the ſame heritage, let each take †, excluſively of the other, his own father's eſtate.

It ſhould be remembered in this place, that if the iſſue of one who has conducted himſelf in ſtrict conformity with the law, happen to be a female, ſhe ſhall belong ſolely to her natural or to her adoptive father, or jointly to both of them, according to the agreement *they have made together;* as is ſuggeſted by the reaſon of the law. This brief expoſition may ſuffice.



* The laſt words are here ſubjoined to complete the text, as I find it cited in another place. T.

† The laſt hemiſtich is word for word the ſame with a text of MENU, Chap. IX. v. 191; but the firſt hemiſtich differs. T.

### Sect. V.—*On the Son of concealed Birth.*

He is fourth in rank according to Yájnyawalcya; for, immediately after describing the son of the wife as third in rank, he proceeds to mention the son of concealed birth.

## CCXLIX.

Yájnyawalcya:—A male child, secretly brought forth *by a married woman* in the mansion *of her lord*, is considered as a son of concealed birth.

The purpose is to show that, on failure of other male issue, including the son of the wife *by a kinsman*, the son of concealed birth shall take a full share, although there be a son of an unmarried girl, a son given, or the like; and the rest shall take the portions allotted to them by Háríta and others (CCXIX). "Secretly;" so that it is not known whose child he is.

## CCL.

Menu:—In whose mansion soever a male child shall be brought forth *by a married woman whose husband has long been absent*, if the real father cannot be discovered, *but if it be probable that he was of an equal class*, that child belongs to the lord of the *unfaithful* wife, and is called a son of concealed birth in his mansion.

If it be judged from any circumstances that he was not begotten by a man of inferior class, and if the true father be unsuspected, he is called a son of concealed birth, and belongs to the same class with his mother, and to the same family with her husband, and perpetuates his race. Such is the exposition approved in the *Retnácara*. It being mentioned as a reason why he belongs to the same class with his mother, that the true father is unsuspected, it

it is thereby intimated, as the opinion adopted in the *Retnácara*, that the legitimate ſon of a prieſt, by a *Cſhatriyá* wife, belongs to the ſacerdotal tribe. This mode of reconciling the apparent contradiction between the texts of YÁJNYAWALCYA and that of another legiſlator is liable to objection: the firſt, after premiſing that the ſon of a prieſt by a woman of the military claſs is called *Múrdhábaſicta**, and ſo forth, adds, "from a merchant, by a woman of the ſervile claſs, ſprung the *Carana;* this rule is ordained in regard to married women:" the other expreſſes, "men of mixed claſſes perform rites during ſeaſons of purity and impurity, in the ſame form which is practiſed by men of their mother's tribe." But CULLÚCABHATTA mentions, as the ſon of a married woman, the *Páraśava*, another name of the *Niſháda*, or ſon of a *Bráhmana* by a *'Súdrá;* but has ſaid nothing expreſsly on this point. He ſhows, however, that, if the father be known to be equal in claſs, but the particular perſon be unaſcertained, the child is called a ſon of concealed birth. Equal in claſs here ſignifies not inferior in claſs; for that agrees with the *Retnácara*, and is conſiſtent with reaſon.

If the natural father be known, and if authority had been duly given to him, and he violated no part of the form preſcribed, ſuch as being ſprinkled with clarified butter and ſo forth, the child is called the ſon of the wife; but not unleſs authority had been given: in this laſt caſe he belongs to the procreator alone, as already mentioned. Is not good argument wanting to ſhow why he ſhould be called the ſon of concealed birth when the real father is unknown, but not ſo called when the procreator is aſcertained? It ſhould not be anſwered, if a known perſon procreate a ſon without authority given for that purpoſe, the child belongs to him alone, not to this *huſband*. That is denied by MENU (CCXXXVI). If this *difficulty* be propoſed, *the anſwer is*, legiſlators are not liable to ſuch reproaches. In fact, this and other texts (CCXXXVI, &c.) allude only to the ſon of concealed birth, to the ſon of the wife, and the like. Elſe the ſon begotten by a known perſon, without authority for that purpoſe, would be another ſon of a ſimilar deſcription with the ſon of the wife. Nor is this reaſonable; for MENU has provided againſt it (CCXXXIV). It ſhould not be affirmed, that he may belong to the huſband of his mother, although



* The ſame with the *Múrdhábhiſhicta* of MENU. T.

though his right of inheritance be denied. The difficulty vanishes, if he may fulfil the duties of a son towards his real father (as a daughter's son *towards his own father*), although he belong to the husband of the wife. Nor should it be asked, what proof is there that he may discharge filial duties, since the twelfth son, mentioned in the text of VISHNU (CLXXIV), is explained in the *Retnácara*, from the concurrent import of the texts of VASISHT'HA and others, as signifying a son by a *Súdrá*. He is described by APASTAMBA as son of his natural father.

## CCLI.

APASTAMBA:—Let cautious men guard their offspring, and suffer not the seed of a stranger to be sown in their fields.

β' A son belongs to his natural father; the wise deem such offspring useless in another world.

From the mention of another world it appears that the child is, to his natural father, a son capable of performing for him such rites as respect another world. The meaning of the text is this: cautious men, or those who are not heedless and negligent, guard their offspring, their son, and son's son, and the rest; and they are careful that the seed of a stranger be not sown in their fields, meaning their wives. He subjoins the reason; because the son belongs to his natural father, and is useless *to the husband of the mother* in respect of another world. Such is the exposition approved in the *Retnácara*.

## CCLII.

MENU:—They who are acquainted with past times have preserved on this subject holy strains chanted by every breeze, *declaring*, that "seed must not be sown in the field of another man."

2. As the arrow of that hunter is vain who shoots it into the wound which another had made just before

fore in the antelope, thus inſtantly periſhes the feed which a man throws in the ſoil of another.

3. Sages, who know former times, conſider this earth *(Prĭt'hiví)* as the wife of king PRÍTHU; and thus they pronounce cultivated land to be the property of him who cut away the wood, *or who cleared and tilled it;* and the antelope, of the firſt hunter, who mortally wounded it.

4. Then only is a man perfect, when he conſiſts of *three perſons united,* his wife, himſelf, and his ſon; and thus have learned *Bráhmanas* announced this *maxim:* "the huſband is even one perſon with his wife," *for all domeſtic and religious, not for all civil purpoſes.*

5. Neither by ſale nor deſertion can a wife be releaſed from her huſband: thus we fully acknowledge the law enacted of old by the Lord of creatures.

6. Once is the partition of an inheritance made; once is a damſel given in marriage; and once does a man ſay, "I give:" theſe three are, by good men, done once for all, *and irrevocably.*

7. As with cows, mares, female camels, ſlave girls, milch buffaloes, ſhe-goats, and ewes, it is not the owner of the *bull or other* father who owns the offspring, even thus is it with the wives of others.

8. They who have no property in the field, but, having grain in their poſſeſſion, ſow it in ſoil owned by another, can receive no advantage whatever from the corn which may be produced.

The meaning of theſe texts is ſubjoined: as the arrow is vain which is laſt ſhot into the vacant wound of an antelope already ſtruck by another, (the antelope not being thereby gained, becauſe the firſt hunter, who mortally wounded it, is alone entitled to it;) ſo that ſeed is loſt which a man ſows in ſoil already owned by

 another;

another; *for*, he does not thereby obtain the ſon *produced*, but the huſband alone has a right to the child *born of his wife*. If he who enjoys the woman abſolutely take her, to whom does her ſon belong? To this queſtion it is anſwered, the right is null, ſince ſhe had been already taken by another: Sages conſider this earth, which became the wife of PRĬT'HU, as wife of him alone, though ſubſequently poſſeſſed by other kings; ſo, that woman who has been already eſpouſed by one, and is afterwards ſeized or enjoyed by another, belongs to him alone *who firſt eſpouſed her*. In like manner, cultivated land, or ground tilled for corn or the like, belongs to him who cleared the foreſt, and extirpated the remaining trees, of which the trunk and branches had been felled, not to him who ſubſequently tills the ſoil: and, in like manner, the antelope becomes the property of him who ſecured poſſeſſion by mortally wounding it, not of him who firſt ſeizes the dead animal and runs away. Still, may not another become owner of a woman, as of any other thing, by purchaſe or the like? The lawgiver ſubjoins an anſwer, with the grounds of it: then only has a man due weight, *when he conſiſts of three perſons united*. Conſequently one man conſiſts of three perſons, his ſon, his wife, and himſelf; as the ſacrifice, called *derśa, conſiſts of three acts of religion**. To this purpoſe words of ſcripture are inſerted by CULLÚCABHATTA "(*the huſband is even one perſon with his wife*"). How then can what is conſubſtantial with one become conſubſtantial with another? Notwithſtanding gift or ſale, ſhe remains his wife, and becomes not the wife of another: this anſwer is expreſsly given; neither by ſale nor by deſertion does ſhe ceaſe to be his wife. As for deſertion, mentioned among the ſins of various degrees†, that relates to abandonment in civil matters; ſhe is not thereby divorced. Hence ſhe forfeits not her claim to the family of her huſband; and, the offence being expiable by penance and the like, impurity *only* is contracted. As partition of inheritance among brothers is made once only, and muſt not be repeated to ſubvert *a former* partition without a ſufficient cauſe, and

* The *ders'a yága* includes and requires the performance of the *prayája yága*, and this again requires the *idáyága*: the *ders'a yága* is a principal ſacrifice performed on the day of new moon, as the *paurnamás'a yága* is performed on the day of full moon. T.

† MENU, Ch. XI, v. 60.

and as a man once only ſays "I give," (and conſequently a thing which has been beſtowed on one ought not to be given to another;) ſo a damſel is given by her father once only, and to one bridegroom. It follows of courſe, from the maxim, once only does a man ſay "I give," that a damſel can only once be given; is it not a vain repetition to add, "once is a damſel beſtowed in marriage?" CULLÚCABHATTA replies, it is incidentally mentioned that chattels in general are once given, and partition of inheritance once made; the ſingle gift of a damſel being the ſubject of the text, it is repeated: this text intimates that the offspring of a woman firſt given to one man, and afterwards obtained by another from her father or other relative, belongs to him alone on whom ſhe was firſt beſtowed. The ſubſequent text (CCLII 7) is plain; and the laſt verſe contains a compariſon. The import of theſe texts is particularly explained under the title of Duties of Man and Wife: the literal ſenſe is here exhibited, for MENU declares that the produce belongs to the owner of the ſoil.

It ſhould not be argued that theſe texts relate to the *expreſs* appointment made by the huſband for the ſake of obtaining iſſue. Were it ſo, it would follow, that, in the caſe of a daughter appointed as above-mentioned, her ſon would be conſidered as the ſon of her huſband; and the compariſon in a former text (CCXXXVI) would be unequal. If this be alleged, ſome reply, 'in the caſe 'of an appointed daughter, the damſel is given to a known per'ſon for the ſake of raiſing up iſſue to *her father* himſelf; in the 'caſe of one who uſes *his wife* himſelf, there is no delivery of her 'for the ſake of obtaining male iſſue: ſuch is the difference.'

## CCLIII.

MENU:—They conſider the male iſſue of a woman as the ſon of her lord: but, on the ſubject of that lord, a difference of opinion is mentioned in the *Véda;* ſome giving that name to the real procreator of the child, and others applying it to the married poſſeſſor of the woman.

2\. The woman is conſidered in law as the field, and

the man as the grain: now, vegetable bodies are formed by the united operation of the feed and the field.

3. In fome cafes the prolifick power of the male is chiefly diftinguifhed; in others, the receptacle of the female: but, when both are equal in dignity, the offspring is moft highly efteemed.

Sages hold generally, that the male iffue of a woman is the fon of her lord; but whether that lord be the married poffeffor of the woman, or the real procreator of the child, *is queftioned;* on this point the fenfe of fcriptural texts is doubtful: fuch is the meaning of the firft verfe. As for what is affirmed, that whichfoever is chiefly diftinguifhed in refpect of procreation, whether the married poffeffor of the woman, or the real procreator of the child, to him does the fon belong; ftill a doubt remains, for both are important. Comparing offspring to other organized bodies, the legiflator adds, "the woman is confidered as the field, &c:" all organized beings, even vegetable bodies, are formed by the united operation of the feed and the field. Confequently the foil and the grain equally contribute to reproduction; and it remains a doubt whether the fon belongs to the owner of the field, or to him who is confidered as the grain. The lawgiver reconciles the feeming difficulty by diftinguifhing parallel cafes: "in fome inftances the prolifick power of the male is chiefly diftinguifhed," or is moft important, &c. To what different cafes is their comparative importance referred? In what inftances is the real procreator chiefly confidered, and in what cafes the hufband or owner of the field? To this CULLÚCABHATTA replies, the real procreator is chiefly confidered, when a child is begotten by a ftranger on a wife not duly authorized for that purpofe; the hufband, when the wife has been exprefsly appointed *to raife up iffue for him.* Accordingly BUDHA*, begotten by CHANDRA on the wife of VRĬHASPATI, who was not authorized for that purpofe, was fon of CHANDRA, not of VRĬHASPATI: VYÁSA, begotten by the fage PARÁSARA on

* Firft of the lunar race of princes. T.

on SATYAVATÍ then unmarried, was ſon of PARÁSARA, not of DAŚARÁJA her foſter father, nor of the king UPARICHARA her natural father. The receptacle of the female is chiefly diſtinguiſhed in ſome caſes: for example, DHRITARÁSHTRA and PÁNDU, begotten by VYÁSA on the two wives of VICHITRAVÍRYA * (AMBÀLICÁ and AMBICÁ), were conſidered as ſons of VICHITRAVÍRYA. It ſhould not be argued, that there is no want of ground for ſelection: if it be agreed that the produce ſhall belong to the owner of the ſeed, then it ſhall belong to him alone; otherwiſe it belongs to the owner of the field. The effect being produced by the intimate connexion † of the ſeed, there is in a manner no difference between them. But the field, being merely a receptacle, is inferior to the grain. MENU ſtates this as an induction of common ſenſe, and ſubjoins the reaſon in the ſecond hemiſtich.

## CCLIV.

MENU:—In general, between the male and female powers of procreation, the male is held ſuperior; ſince the offspring of all procreant beings is diſtinguiſhed by marks of the male power.

Becauſe the produce is diſtinguiſhed by unaltered marks of the ſeed, denoting the peculiar form *of its prototype, therefore is the ſeed held ſuperior.* He expreſſes the ſame thought in the ſubſequent verſe:

## CCLV.

MENU:—Whatever be the quality of ſeed ſcattered in a field prepared in due ſeaſon, a plant of the ſame

* Forty-ſixth of the lunar race. T.

† One of the categories in dialectick philoſophy. It is the connexion of integrant parts with that of which they are parts; the connexion of claſs with individuals, of quality with ſubject, of action with the agent or with the ſubject; in ſhort, it is intimate and ſempiternal connexion, diſtinguiſhed from conjunction, which is an accident, and placed among qualities in a philoſophical arrangement. T.

same quality springs in that field with peculiar visible properties.

There is no vain repetition; but an amplification of the sense, and a demonstration of the maxim contained in the preceding text. For this objection might have been made: seed cast on fertile soil produces the best fruit; sown in ungrateful soil, the worst: hence it should be affirmed, that intimate union with the constituent particles of earth also contributes to reproduction. That objection is here obviated: seed scattered in a field prepared in due season, that is, thoroughly tilled by the cultivator at the proper season for sowing, produces the best fruit; not so if the land be tilled at an improper season: can it be therefore argued, that intimate union with season also contributes to reproduction? Hence it should be only affirmed that a distinct effect proceeds from a distinct cause. There is no difficulty, nor possible reply; for time, having no constituent particles, cannot be intimately united with substance, *as a plastick cause with an effect.*

## CCLVI.

MENU:—Certainly this earth is called the primeval womb of many beings; but the seed exhibits not in its vegetation any properties of the womb.

For the sake of distinction, he mentions the earth considered as a womb. Seed assumes not any properties of the womb, that is, of the earth, such as blackness, adhesion of sluggish particles, and the rest. A plant vegetates, being produced in fertile soil, as above mentioned. The constituent particles of earth might be supposed to enter into the plant, because vegetation consists in the increase of component parts: but the inference would not be accurate, for the properties of the soil, such as blackness and the rest, are not found in vegetating bodies, although their component parts be increased. As a jar, produced from a black lump of clay, is black, not so these *vegetable substances.* It should not be objected, that the plant, produced from grain, does not retain the small bulk of the seed: a small germin is first produced

duced from the minute originary particles of the ſeed, which become fixed; afterwards the ſame plant grows by *aſſimilating* particles of earth and of water, which are moſt important in compariſon with thoſe which are foreign. Hence the ſeed is chiefly diſtinguiſhed, becauſe it is a prior cauſe; the earth is not *ſo* diſtinguiſhed, becauſe it is a ſubſequent cauſe; what is foreign *to reproduction* is neither chiefly diſtinguiſhed nor undiſtinguiſhed, *but wholly unnoticed.* Accordingly, a ſon begotten on a woman duly authorized by her huſband, belongs to *him conſidered in law as* the owner of the field; not to a ſtranger, even though ſhe were appointed by that ſtranger to raiſe up iſſue for him. It ſhould not be affirmed, on the contrary, that a plant is firſt produced from the component particles of earth, and grows from the component particles of the ſeed. Were it ſo, plants of an uniform kind would be produced when ſeeds of various ſorts are ſcattered in the ſame ſoil, as plants of an uniform kind actually are produced when ſeeds of the ſame ſort are ſcattered in various ſoils.

## CCLVII.

Menu:—On earth here below, even in the ſame ploughed field, ſeeds of many different forms, having been ſown by huſbandmen in the proper ſeaſon, vegetate according to their nature:

2. Rice plants, mature in ſixty days, and thoſe which require tranſplantation, *mudga, tila, máſha,* barley, leeks, and ſugar-canes, all ſpring up according to the ſeeds.

3. That one plant ſhould be ſown, and another produced, cannot happen: whatever ſeed may be ſown, even that produces its proper ſtem.

Accordingly ſeed watered in a veſſel of hardeſt iron puts forth a ſhoot, even without ſoil; but earth alone, ſprinkled with water, produces no plant without ſeed. Does not earth ſprinkled with water produce graſs and other plants, which have not been ſown?

ſown? and is it not conſequently found that, in ſome inſtances, ſoil does produce plants without ſeed? It ſhould not be argued, that the ſuperior influence of the ſoil may be true in reſpect of graſs and weeds; but the ſeed is ſometimes chiefly diſtinguiſhed in *the reproduction of* corn and the reſt: hence they are alone mentioned in this place by way of illuſtration. There exiſts no argument to ſuggeſt this diſtinction, that the ſuperior influence of the ſoil, as the natural cauſe of production, is deduced from the inſtance of graſs and weeds; and the ſuperior influence of the ſeed, from the inſtance of corn and uſeful plants. To the queſtion propoſed, the anſwer is, no; for even ſeed appertains to the terrene element*. Thus it is obſerved in a gloſs on the words of UDAYANÁCHÁRYA, in his metrical rules of logick, ("colours like thoſe of a germin and of a ſcorpion,") that the ſtem of the plantain ſprings from the ſeed of burnt canes. The reaſon is, that all vegetable, mineral and animal bodies are produced from the minuteſt particles of earth, called atoms, by means of inchoative union †; but ſuch particles being in no reſpect diſſimilar, ſince they are eternal, the plaſtick centers ‡ of various kinds ſpring from adheſions mutually diſſimilar. It ſhould not be aſked, how can barley, and other plants which bear ſeed, ſuch as corn and the like, be ſaid to ſpring from a maſs of earth alone, ſince ſuch particles exiſt in the ſeed as well as in the maſs of earth? A ſpecial adheſion is preſuppoſed, which produces barley and other plants from component particles, to which a ſpecial adheſion belongs, connected with ſeed by its own nature, or by air fixed by the will of GOD: and, from the effect obſerved, an adheſion is preſumed, which ſometimes produces plants, even from particles to which adheſion relative to other ſeed belongs; as the ſtem of a plantain ſprings from the ſeed of burnt canes. In like manner, in the caſe of graſs and weeds, they are conſidered

* That is, all ſeed is earth, and the ſeed of graſs and other weeds exiſts in the ſoil, though not ſown there by human deſign: I ſhould wiſh to attribute this ſenſe to my text. T.

† *Aravdha*, or *arambaca*, inchoative: by inchoation ſeems to be meant the firſt plaſtick union of atoms. T.

‡ *Sanſt'hána*, an incipient body formed by the primary adheſion of particles, to which others are aſſimilated in its progreſs to a ſenſible form. T.

dered as produced from ſuch particles, to which an adheſion relative to the terrene element belongs. Neither is the ſuperior influence of the ſoil thence inferred; for ſeed is not mentioned as uſeleſs *to reproduction*, nor as *contributing to it in an* inferior *degree:* and holy Sages affirm, that the ſeeds of all vegetables were placed in the earth ſubſequently to the creation.

*Srí Bhágavata:*—Surely thou ſhalt not fooliſhly diſobey my commands, and abandon the ſeeds originally created by the ſelf-exiſtent, and *now* concealed in thee.

By the expreſſion "concealed in thee," it is intimated that all ſeeds were placed in the earth. Accordingly the divine CÁLIDÁSA ſays,

"This univerſe of moving and unmoving beings is celebrated as the production of that prolifick ſeed which was ſown in the waters by thee, O unborn being!"

And again:—"She, whom the wiſe call Nature, foſtering all ſeeds."

The firſt verſe contains praiſe of BRAHMÁ uttered by the Gods. "Unborn being! the univerſe, conſiſting of moveable and immoveable ſubſtances, is the production of that ſeed which was ſown in water by thee, at the beginning of the world, when water alone had been created." Conſequently the earth, containing ſeed which is the ſource of animate and inanimate beings, ſprung from the united operation of ſeed and water.

It ſhould be here remarked, that the body of a ſon being produced from the union of the ſeminal fluids of the male with the uterine blood of the female, as declared by VASISHT'HA (CCLXXIII), both ought to be conſidered as important *in generation;* but this agrees not with the examples ſtated as analogous. If this be alleged, the anſwer is, the text of VASISHT'HA is intended to require the aſſent of the mother to the donation, ſale or the like, though ſhe be not chiefly diſtinguiſhed; for

for *the first part of* it concludes by declaring, that both parents have power to give, to sell, or to desert a son. This does not contradict the superiority of the male compared with the female. It should not be objected, that there is no argument to support this induction, since the component particles of animated body proceed equally from seminal fluids and from blood. The seminal fluids are immediately connected with life, *and therefore most important*.

*Srí Bhágavata*:—To produce the body of a living being, by an act governed by destiny, a drop of male seed must enter the womb of the female.

Accordingly, even without *a natural* soil, DRÓŃA was produced from the seed of BHARADWÁJA deposited in a wooden bucket *(drónì *)*, and others in similar modes †, but no one ever sprung from the field alone without seed. BHAGÍRAT'HA and others have been produced, like the self-existent, by the power of absorbed contemplation. But the short-lived men of the present day cannot procreate issue without a receptacle. Accordingly UDAYANÁCHÁRYA says, "By the experienced decline of birth, of initiating ceremonies, of science and the like, of power, of sacerdotal duties and acts of religion, the present race has degenerated." Common sense shows, that the component particles of the offspring are of the same nature with those of the father and mother, being *produced* from the intimate union of seminal fluids and uterine blood. Consequently, if the wife be committed *to another* for the sake of raising up issue, the offspring belongs to the husband of the wife; but if there were no such *declared* intention, he belongs to the natural father. Thus do authors expound the law.

But some hold, that a son procreated on the wife of another is competent to perform rites which respect another world, for his natural father only, not for the husband of his mother, though belonging of right to him: for it is said in the text of 'APASTAMBA, "the wife deem such offspring useless in another world"

* A vessel used in boats to throw out water, and for other purposes. T.

† According to the legends of the *puránás*, AGASTYA sprung from the seed of PULASTYA deposited in an earthen vessel. T.

world" (CCLI). Menu has declared, that the produce belongs to the owner of the field (CCLII); but he intimates, that rites which respect another world must be performed for the natural father (CCLIV). In some cases, that is, in respect of acts relative to another world, the prolifick power of the male is chiefly distinguished; in others, that is, in respect of acts relative to this world and consequent to property, the receptacle of the female is chiefly distinguished.

It may be accurately affirmed, that the son of concealed birth becomes the son of his mother's husband, because there is no other owner (since the real procreator cannot be discovered), and because he is deserted by his natural father.

The son of concealed birth is described by Vishnu as sixth in rank (CLXXXV), to show that he shall not take a full share and so forth, if there be a son by a woman twice-married, and a son of a young woman unmarried, who are superior to him by good qualities and class. This shall be further explained in the section on the Son of a young woman unmarried. By the consent of almost every legislator, he may take the inheritance of a kinsman, as well as that of his father. According to Hárítá, a nineteenth part shall be given to the son of concealed birth (CCXIX); according to the *Brahme purána*, a sixth part (CCXVII); according to Sanc'ha and Lic'hita, one share (CCXLVII): for "the rest" intends the son by a twice-married woman, the son of an unmarried girl, and the son of concealed birth. He claims the family and lineage of his mother's husband.

## Sect. VI.—*On the Son of a young Woman unmarried.*

He is fifth in rank according to Yájnyawalcya; for, after describing the fourth, or son of concealed birth, he thus describes the son of an unmarried girl.

CCLVIII.

## CCLVIII.

Yájnyawalcya:—The *cánína*, or ſon born of a young woman unmarried, is conſidered as the ſon of his maternal grandfather.

Vasisht'ha alſo aſſigns him the fifth place, but ſuperior to the ſon of concealed birth, and inferior to the ſon by a twice-married woman.

## CCLIX.

Vasisht'ha:—The ſon of an unmarried girl is fifth: he whom an unmarried damſel produces through luſt, in her father's houſe, is called ſon of a young woman unmarried, and is conſidered as the male iſſue of his maternal grandfather.

## CCLX.

The maternal grandfather becomes a father by the birth of that ſon whom his unmarried daughter produces from a man of equal claſs: ſuch a ſon may offer the funeral cake, and poſſeſs the heritage.

"Through luſt;" explained in the *Retnácara*, acting from the impulſe of her own will. Ungiven ſignifies "unmarried." From an equal *man;* "from a man of equal claſs;" that is, from a man not inferior in claſs. Conſequently, if an unmarried daughter, impelled by luſt, receive the careſſes of any man, ſhe may have choſen, and bring forth a ſon, that child belongs to his maternal grandfather, and is called the ſon of a young woman unmarried.

## CCLXI.

Baudáyana:—The male child begotten by a man of

of equal claſs, on a damſel whom he embraces unmarried and unaffianced, in her father's houſe, is called the ſon of a young woman unmarried, and becomes the child of him to whom ſhe is afterwards given in marriage.

He is conſidered as ſon of him to whom that maiden is given in marriage. This diſagrees with VASISHT'HA and YÁJNYAWALCYA. It ſhould not be affirmed, that the word *cánína* is here taken in the ſenſe ſuggeſted by its etymology; conſequently the ſon procreated while ſhe was a maiden *(canyá)* is called ſon of a pregnant bride *(ſahóḍ'ha)* and belongs to the married poſſeſſor of that woman; he is not named *cánína:* and hence there is no contradiction. The ſon of a pregnant bride is ſeparately mentioned by NÁREDA.

## CCLXII.

NÁREDA:—The huſband is conſidered as father of the ſon produced by *his wife while ſhe was yet* a maiden, of the ſon produced by a pregnant bride, and of him who is ſecretly begotten on a diſloyal wife: they are held entitled to ſhares of the heritage.

And MENU, having deſcribed the ſon of an unmarried girl (CCLXIII), proceeds to the ſeparate mention of the ſon produced by a pregnant bride (CCLXXXVIII).

## CCLXIII.

MENU:—A ſon whom the daughter of any man privately brings forth in the houſe of her father, if ſhe *afterward* marry her lover, is deſcribed as a ſon begotten on an unmarried girl *.



* I do not alter the tranſlation (Chapter ix. V. 172): but the commentary furniſhes another interpretation.—See a ſubſequent note.

Nor ſhould it be affirmed, that the texts of VASISHT'HA and YÁJNYAWALCYA ſuppoſe a declaration in this form; "her ſon ſhall be mine." Were it ſo, ſhe would be an appointed daughter, and it would be wrong to name her ſon as fifth in rank. If this be propoſed, the anſwer is: if the maternal grandfather have no male iſſue, then the ſon begotten on his unmarried daughter is conſidered as his ſon; if the bridegroom have no *other* male iſſue, the child is conſidered as his ſon; and if neither, or if both, have male iſſue, he is conſidered as ſon of both.

CHANDÉSWARA.

Being ſon of both, though not begotten by one related by blood to the maternal grandfather, he claims the family of that anceſtor only. In reſpect of double ſets of oblations and the like, the practice is ſimilar to that followed by the ſon of a wife conſidered as ſon of two fathers.

Here a doubt occurs; how can the child be ſon of the bridegroom, ſince the field did not then belong to him, and the ſon is not produced from his ſeed? Some reconcile the ſeeming difficulty by ſaying, the ſenſe of the text is not rigorous in this inſtance. But others hold, that, grain being already produced in a field which had become waſte, and that land being afterwards ſeized by any perſon, as the grain ſhould alſo be taken by him, ſo, in the preſent inſtance alſo, *the offspring ſhould belong to the ſubſequent poſſeſſor of the mother*. Should not that crop only, which is then produced, be taken by the preſent owner of the field, elſe he might claim the crops long ſince produced from that field? In like manner, in the caſe of an unmarried girl, the father alone has a claim to the maiden, and her offspring therefore belongs ſolely to him. If this be alleged, the anſwer is, while ſhe continues a maiden, the father is only acknowledged to have ſuch right as empowers him to give her in marriage, and no other: accordingly, he muſt not enjoy her, or the like. A ſon, therefore, becoming the property of his mother, becauſe he is produced from uterine blood, belongs to her alone.

How then are the words of VASISHT'HA and YÁJNYAWALCYA juſtified? It ſhould not be argued, that the dominion of the father over his daughter is admitted by theſe Sages; but that fruition is forbidden by poſitive law, like fruition of a female buffalo, or the like, held as property. Were it ſo, various opi-

nions

nions being delivered by Sages, we ſhould have no certainty which ought to be followed. Nor ſhould it be argued, that the different caſes intended have been already diſtinguiſhed: he becomes the ſon of his maternal grandfather, or of the married poſſeſſor of his mother, whichever has no ſon; conſequently, there is no want of certainty. If the right of one be aſcertained from reaſoning, it is nothing to the purpoſe that another has no male iſſue. His maternal grandfather dying after his mother's marriage, if the child then became ſon of his maternal grandfather, and if *tonſure and other* ceremonies of his regeneration be performed by the family of that anceſtor, how can he alſo become ſon of his mother's huſband, when this man ſubſequently dies? Since he cannot be *truly* ſon of both, by which family ſhall his inveſtiture and other ceremonies be then performed? On this point there is no certainty. Again; the ſon of a pregnant bride would be ſimilar to the ſon of an unmarried girl, for he alſo was *in fact* procreated at the moment when pregnancy took place: but he is not given at the time of marriage, for the child is diſtinct from the woman to be wedded; and if he can be the ſon of two fathers, it is not proper to deſcribe him as ſon of a ſingle father. It ſhould not be argued, that, as the clothes are alſo beſtowed when a damſel is given with ornaments and clothes, ſo the fœtus is alſo beſtowed when a pregnant daughter is given: the ſon of a pregnant bride, therefore, is not ſon of his maternal grandfather. Were it ſo, his affiliation being deduced from donation alone, a diſtinct partition, and ſeparate ſhare from that of a ſon given, would be improper; and the man who marries a pregnant bride, might enjoy a daughter born from that pregnancy*.

On this ſubject it is ſaid, ſuch offspring as the ſon of an unmarried girl belongs to both; becauſe the mother has a claim to that child, ſince he ſprang from her blood; and the maternal grandfather has alſo a claim, ſince he then poſſeſſed dominion over the mother: hence the man who eſpouſes her claims the mother's ſhare, for a wife has no property excluſively her own (Book II, Chapter IV, v. LVI). It ſhould not be objected, that her father alone has an immediate right to her ſon, though

 ſpringing

* Becauſe ſhe was given to him, but does not become his daughter. T.

ſpringing from her blood, becauſe even the blood of the daughter was ſubject to the dominion of her father. Were it ſo, a mother would have no claim to her ſon born in lawful wedlock, and the gift of her child would not depend on her aſſent, as declared by VASISHT'HA. It ſhould not be argued, that, admiting the mother's power, the father has nevertheleſs a ſole claim to the ſon born in lawful wedlock, becauſe he has a natural right, ſince the ſon was generated from his ſeminal fluids; and the right accrues to him alone, even though the child be produced from uterine blood: a mother, therefore, has ſuch a claim as the father has to the ſon of a wife begotten by a kinſman, and as the maternal grandfather has to the mother. Nothing can prevent the right of a huſband to the property of his wife, as declared by a poſitive text (Book II, Ch. IV, v. LVI). Nor ſhould it be objected, that a ſtepmother would have a claim on the ſon of another wife, under the text which declares property common to the married pair (CCCCXV). That is admiſſible; it will be mentioned in the ſection on Sons Given, that the ſon ſhall offer the double ſet of oblations and the funeral cake for her father.

We do not diſcover the reaſon why authors have ſaid that he ſucceeds as a ſon to his maternal grandfather, or to the man who eſpouſed his mother, if either of them leave no male iſſue. It ſhould not be argued, from the text of YÁJNYAWALCYA (CCXXXVIII), that, as the want of male iſſue is mentioned as a preſcribed condition in the caſe of the ſon of a wife begotten by a kinſman, ſo *is the ſame required* in the preſent caſe. 'SÚLAPÁNI, author of a commentary on the inſtitutes of that legiſlator, refers this text to the caſe where a ſon is begotten on a wife *by a kinſman or ſtranger*, with a previous *declaration or* implied intention, to which both parties aſſent, "the child ſhall be conſidered as the offspring of us both;" to which caſe NÁREDA *likewiſe* alludes (CCXXXIX). The words, "by one who has no male iſſue," are inſerted *in the text* (CCXXXVIII), that the intention of the procreator may be fulfilled if he need offspring; for, he who has male iſſue can hardly need a ſon begotten on the wife of another; and one who has no progeny, of courſe, does need that ſon. Nor ſhould it be argued that authors have ſaid ſo, becauſe his affiliation is null, if there be a

ſon

ſon begotten in lawful wedlock, or other ſon of the *firſt* four deſcriptions. There is no argument to prove, that, if there be a ſon begotten in lawful wedlock, no other can be legal iſſue; the ſon of a pregnant bride and the reſt are acknowledged, *although other ſons exiſt*; and the appointment of a daughter to raiſe up iſſue to MENU (the founder of memorial law), whilſt he had legitimate ſons, could not be juſtified. Nor ſhould it be argued that they have ſaid ſo, to intimate his diſqualification for offering the funeral cake to him who leaves any one of the four ſons firſt deſcribed, as ſuggeſted by the text of YÁJNYAWALCYA (CLXXXIX). That is mentioned *in the text cited*, to ſhow that the ſon of an unmarried girl is diſqualified, if one begotten in lawful wedlock, or other ſuperior ſon, exiſt, as a younger child is diſqualified if his eldeſt brother be living. Elſe, becoming the ſon of the bridegroom, becauſe the paternal grandfather at that time had male iſſue *living*, he ſhall not offer the funeral cake, even though the ſon of the maternal grandfather afterwards die; for, having once become the ſon of the bridegroom, that relation cannot afterwards ceaſe. Again; if both a ſon of the body, and one begotten on a wife by a kinſman, exiſt, the right veſting in him alone who was begotten in lawful wedlock, ſhall not the ſon of the wife offer the funeral cake, if the ſon of the body afterwards die? It muſt be therefore affirmed, that, "on failure of the firſt" (CLXXXIX), ſignifies 'the firſt, qualified to perform the *śrádd'ha* and the like, not being alive.' But, if it be ſaid, we do not deny the right of both to the ſon of a young woman unmarried, but we deny his competence if there be a ſuperior ſon to obſtruct his claim; then this opinion coincides with our own. It is our opinion, ſay theſe lawyers, that by him is effected deliverance from the hell called *put*, and relief from the evils cauſed by the want of male iſſue, for his maternal grandfather, under ſuch circumſtances, and until his mother be married; and for the man who weds his mother, if no other ſon be procreated by him on any wife.

From the terms uſed in the text of MENU (CCLXIII), it appears that a child privately brought forth is alone conſidered as the ſon of an unmarried girl, not one whoſe real father is known; for, were it ſo, ſince the ſeed is ſuperior to the receptacle,

ceptacle, he would be conſidered as the ſon of his natural father*. He is deſcribed by MENU as ſeventh in rank, and inferior even to the ſon given, the ſon made *by adoption*, and the ſon rejected (CLXXVIII). DÉVALA deſcribes him as fourth in rank (CXC); and ſo does NÁREDA (CLXXVIII). VISHNU and VASISHT'HA (CLXXXV and CCLIX) aſſign to him the fifth place, but inferior to the ſon by a woman twice married, and ſuperior to the ſon of concealed birth. HÁRÍTA virtually places him ſixth in rank (CCXIX) †. To reconcile ſuch ſeeming contradictions, authors have approved a regulation founded on the various degrees of virtue. The difference of claſs might be alſo conſidered: for inſtance, the ſon of an unmarried girl, being procreated by a man of inferior claſs, is ſixth in rank, if imbued with bad qualities; or ſeventh, if imbued with very bad qualities. No one has deſcribed him as inferior to the ſon of a pregnant bride; what then ſhall be the rule if the ſon of an unmarried girl be deficient in virtue compared with ſuch a ſon? By parity of reaſoning, the ſon of the pregnant bride ſhall alone take the inheritance; for vice is ſtated in the following text as a fault which excludes a man from inheritance; and it is reaſonable that one who is deficient in virtue ſhall have a leſs ſhare, if there be a virtuous ſon.

## CCLXIV.

VRĬHASPATI:—Though born of a woman equal in claſs, one who is not virtuous ſhall have no claim to the paternal eſtate; it is ordained to devolve on thoſe learned prieſts who offer the funeral cake to the deceaſed ‡.

But,

* It ſhould therefore ſeem neceſſary to alter the verſion of that text, by ſubſtituting "a bridegroom" for "her lover;" or by changing the conſtruction: "A ſon whom the daughter of any man privately brings forth in the houſe of her father, is deſcribed as a ſon begotten on an unmarried girl, and belongs to him who afterwards marries her." T.

† See v. CLXXXVII, where he is placed fourth in the enumeration of ſons. T.

‡ The text at large is here inſerted from a ſubſequent ſection. It was partially and anonymouſly quoted in this place. See the interpretation in a ſubſequent Chapter, v. CCCXIX. T.

But if they be equal in good qualities, affinity by birth and legitimacy ſhould be conſidered. He who is a ſon given, is obtained by acceptance of donation; the ſon made *by adoption* was ſimilar to unowned property; the ſon of an unmarried girl is obtained in right of the field; a ſon by a twice-married woman is a child of the body, but produced by the adultery of his mother; a ſon of concealed birth is the offspring of the wife, *at the ſame time* poſſeſſing the general nature of unowned property. Conſequently, a ſon by a woman twice married, being procreated by a man himſelf, his affinity by birth is greater; a ſon of concealed birth, being procreated by another, while the mother belongs to the adoptive father, his affinity is leſs: the ſon of an unmarried girl is inferior to him, becauſe the adoptive father was unconnected with the mother at the time of his birth; but is not inferior, *conſidered as the ſon of her father*, becauſe the maternal grandfather then had a right *over the mother*: theſe, however, are not begotten by the married poſſeſſor of the mother. A ſon made *by adoption*, and a ſon given, may have been procreated by the lawful huſband of the mother, but they are not related by birth *to the adoptive father*.

The proof is ſubjoined: relation by birth, as declared by the law, muſt be affirmed ſuperior to legitimacy in reſpect of the right to inherit and to perform obſequies; elſe, that right would belong to the ſiſter's ſon or other collateral, even though a ſon of a pregnant bride, or other repreſentative, exiſt. Conſequently, although a ſon given, or a ſon made *by adoption*, do exiſt, the ſon by a twice-married woman has a prior title; and that is declared by VISHNU and VASISHT'HA. His inferiority, declared by YÁJNYAWALCYA, muſt be explained by the difference of good qualities and claſs. For the diſtinction between a crop produced from ſeed belonging to the man himſelf, in a field appertaining to a deceaſed owner, and the crop produced from the ſeed of another, now deceaſed, in a field belonging to the man himſelf, muſt be deduced from the pre-eminence of the ſeed.

Is not the ſeed in this caſe ſimilar to a waif? for the owner is not diſcoverable: but the field belongs to the adoptive father; and the ſon of concealed birth is therefore ſuperior. A twice-married woman belongs to her firſt huſband, even though a ſecond marriage actually take place: property being once veſted,

 it

it is not acknowledged to fail, even though her husband die (CCCCLXXVII 2); the offspring of a twice-married woman, being therefore produced in the field of another, is so far inferior. As for the son of a young woman unmarried, since a daughter, *afterwards* obtained by gift *from her father*, has not *already* produced lawful progeny, her *illegitimate* offspring is inferior to the son of concealed birth. That should not be affirmed; for, the natural father being unknown, the son of concealed birth is allied *to his adoptive father;* and, the owner of the soil being unascertained, the son by a twice-married woman is allied *to his natural father*.

Some commentators hold, that a son begotten on the wife of another, with an agreement in this form, "she is mine," is the son of a twice-married woman described by VISHNU as superior in rank. But if no such agreement be made, he is inferior, being mentioned by YÁJNYAWALCYA as sixth in rank. For example; the son procreated with the consent of the husband, expressed in this form, "the offspring shall belong to us both," and the third son begotten on the wife of another, (who becomes son of his natural father, as shown by the text of GOTAMA,) are children of twice-married women.

## CCLXV.

GÓTAMA:—Let not *issue be procreated by appointment* beyond a second *son; else*, the offspring shall belong to the natural father, or, by private agreement, to another: *but a son begotten* on the wife of a living man, belongs to him, or, by special agreement, to another by whom he was procreated; or he shall belong to him who maintains the mother, in right of that support; or to both, *if they need sons*.

CHANDÉSWARA thus expounds the text: let not him who is appointed to raise up issue, pass the second procreation, and beget a third or other son, in consequence of that appointment.

If

If he do procreate further offspring, it belongs to the natural father. By a private agreement in this form, "all the progeny ſhall be mine," the further offspring belongs to another, namely, to the huſband of the mother. That offspring which is begotten on the wife of a living huſband, who is incapable of procreation, belongs to the huſband, even though ſuch offspring be third; or, by ſpecial agreement, being procreated by another on the wife of a living huſband, he belongs to the natural father: but if another, namely, the natural father, ſupport the wife, the firſt iſſue belongs to him; if he do not ſupport her, to the huſband; or if the huſband maintain her, to him. The term uſed *(bhartrĭ)* here ſignifying the perſon who ſupports her, the meaning is, that the ſon belongs to him who maintains the mother, in right of that maintenance: but if both need male iſſue, that offspring belongs to both.

But a ſon of concealed birth appertains ſolely to the mother, if the natural father be unknown.

## CCLXVI.

NÁREDA:—Soil would not be *productive* without ſeed, nor is ſeed *productive* without ſoil: hence offspring is in law conſidered as belonging to both the father and the mother.

Father here ſignifies the natural parent. Hence the claim of the mother's lord ariſes ſolely from his right over her: and, the *Cálicá purána* expreſſing that a wife affords connubial joy and male iſſue, ſhe prevails before a daughter in reſpect of male iſſue; the ſon of concealed birth ſhall therefore ſucceed in the firſt inſtance; after him the ſon of a young woman unmarried: ſuch is the opinion of YÁJNYAWALCYA. The ſon of an unmarried girl is deſcribed by MENU as ſeventh in rank: that proceeds on the ſuppoſition of his becoming the ſon of him who marries the mother, as declared by MENU himſelf; he is indeed inferior, becauſe he is not produced at a time when the adoptive father had property in the mother. NÁREDA, acknowledging the ſon of a young woman unmarried to become the child of him who marries her,

her, describes him as superior to the son of concealed birth: that supposes transcendent virtue. This will become obvious from the further discussion of the subject. VISHNU and DÉVALA also suppose the son of an unmarried girl to be endowed with good qualities. In other cases, say these commentators, the seeming contradictions should be reconciled in a similar mode.

SANC'HA and LIC'HITA, DÉVALA and others, describe the son of an unmarried girl as heir to collateral relations; MENU, BAUDHÁYANA and others describe him as heir to his father and mother only. On this some lawyers remark, that his right of inheriting from his father, being declared in the institutes of MENU, which prevail over all other codes of law, is alone consistent with propriety. That is wrong; for, were it so, SANC'HA and the rest would have no authority. Therefore, a son of an unmarried girl, considered as the child of two fathers, shall, in conformity with the text of MENU, take the estate of him who became his father by marrying his mother, not the estate of that father's brother or other collateral: but he shall take the estate of the brother or any other kinsman of his maternal grandfather considered as his father, in conformity with the texts of NÁREDA and the rest. Such being the case, is there not an imperfection *in the texts* compared with each other? It should not be answered, that such a son of an unmarried girl is comprehended in the text of MENU under the appellation of a son rejected. Were it so, the son rejected by his natural parents, and such a son of an unmarried girl, would have equal shares. But it is not so, for he may be also comprehended in the text by the particle subjoined to the word rejected (CLXXXVIII 2), *considering it as relative to another word understood.* The order explained in the section on Sons Given, must be assumed as it is delivered by YÁJNYAWALCYA and the rest. It should not be objected, that still there is an inconsistency with the text of NÁREDA, because he describes the son of an unmarried girl as the child of him who marries her, and as heir to the kinsmen of his father. The difficulty is removed by establishing, that he is considered as son of his maternal grandfather, in the text wherein he is described as heir to kinsmen: it cannot be said, that what is contemplated by YÁJNYAWALCYA, is not contemplated by NÁREDA. This subject will be further discussed in the section on Sons Given.

Other

Other ſons, ſays VRĬHASPATI, namely the ſon of the wife and the reſt, ſhall reſpectively ſhare a fifth, a ſixth, and a ſeventh part (CCXLVI): that is, the ſon of a wife ſhall have a fifth; the ſon of an unmarried girl a ſixth; and the ſon of a woman twice married a ſeventh. Thus the *Retnácara*. But it may be objected, what harm would there be in ſaying the ſon of a wife and other five ſons ſhall have a fifth, a ſixth, or a ſeventh part, according to the difference of their poſſeſſing good qualities *in an eminent degree*, or poſſeſſing them in a middle degree, or being wholly deficient in virtue? HÁRÍTA directs that a twenty-firſt part ſhall be given to the ſon of an unmarried girl (CCXIX). The *Brahme purána* allots an eighth part to him (CCXVII). SANC'HA and LIC'HITA ordain one ſhare each for the reſt (CCXLVII), meaning the ſon by a twice-married woman, the ſon of an unmarried girl, and the ſon of concealed birth. This brief expoſition may ſuffice.

## SECT. VII.—*On the Son by a twice-married Woman.*

He is ſixth in rank according to YÁJNYAWALCYA; for, after mentioning the ſon of a young woman unmarried as fifth in rank, he proceeds to deſcribe the ſon by a twice-married woman.

### CCLXVII.

YÁJNYAWALCYA:—A ſon begotten on the wife *of another*, whether ſhe were *previouſly* deflowered or not, is called the ſon of a twice-married woman.

Some hold that the ſon who is procreated on a wife authorized by her huſband in the form above mentioned, whether ſhe were previouſly enjoyed by him or not, is the ſon of a twice-married woman.

### CCLXVIII.

## CCLXVIII.

Cátyáyana:—The son begotten on her who, deserting an impotent or degraded husband, takes a second lord, is a son by a twice-married woman, and evidently belongs to his natural father.

This text they also consider as relating to an appointed wife; for impotence, degradation, and other motives for obtaining a son of the wife, are here mentioned, *the first expressly, the rest by implication.* Consequently, in such cases, wherein the son of the wife becomes son of her husband, either the third child, or he concerning whom it was agreed, "the offspring shall belong to us both," is called a son by a twice-married woman; not so the child begotten on a woman who deserts her wedded lord, and connects herself with another man, saying, "I am thine." That is wrong; for 'Súlapáni also describes the offspring of a woman who has deserted her lord, as son by a twice-married woman; 'a 'male child begotten on a widow married again, or on a woman 'who has deserted her lord *for a second husband*, is a son by a twice-'married woman.' She who deserts her lord is not appointed by any person whomsoever *to raise up issue*; nor would such an appointment legitimate the son of *such* a wife. Not truly becoming the son of a wife *legally begotten by a kinsman or stranger*, what prevents his being justly considered as a son by a twice-married woman? *for by that is meant*, generally, the male issue of a woman not duly authorized. Accordingly it is said in the text of Cátyáyana, "deserting a husband:" and degradation and impotence are there mentioned as the grounds of desertion. That term is merely illustrative; for the male issue of a wife duly authorized is also acknowledged as son of a twice-married woman; else, *considered as the offspring of his natural father*, he would not be included among the twelve sons: and Yájnyawalcya does not proceed so far as to mention desertion.

## CCLXIX.

Menu:—He whom a woman, either forsaken by her lord

lord, or a widow, conceived by a second husband, whom she took by her own desire, *though against law*, is called the son of a woman twice married.

He whom a woman, either deserted by her husband, or become a widow, produces by another man, with whom she has contracted a second marriage, is called the son of a woman twice married, and is considered as the offspring of his natural father.

CULLÚCABHATTA.

'Having contracted a second marriage with another man,' is the meaning of the terms employed in the text. It is thereby intimated, that the child begotten by a man who contracts a second marriage with *such* a woman, and not the male issue of her who has been duly authorized by her husband, is the son of a twice-married woman. Accordingly it is said in the *Retnácara*, 'he whom a woman conceived by a man of equal class;' this is understood, and the subsequent term signifies connecting herself by marriage with another man: hence likewise `SÚLAPÁNI explains the term, "son of a woman twice married" *(paunerbhava)*, 'son begotten on a woman married again.' To this an objection occurs, that, were it so, the son who is begotten with the sanction of the husband, and who is considered as the offspring of his natural father, would not be included among the twelve sons.

Is it not admissible, that he also should be considered as exclusive of the twelve sons, like one who is begotten by force on the wife of another, with or without the knowledge of her husband; for he is not mentioned as a son by any author? It should not be argued, as resulting from the text of MENU (CCLIV), that he is considered as the offspring of his natural father: that text is explained as declaratory of the proprietary right which is vested in the owner of the seed. Nor should it be argued that he is so because `APASTAMBA describes him as performing rites relative to another world (CCLI), from which it follows that he is considered as a son: the text of `APASTAMBA expressing, "the wife deem such offspring useless," must be explained as reprehending the adoption of a son begotten on a wife *authorized for the purpose*. If this question be proposed, the answer is in the negative; for one who has no *other* male issue is shown to have a claim on the son procreated by him upon the wife of another; and the natu-

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ral father did procreate a child for the ſake of having a ſon *to perform duties* relative to another world; elſe the deſign that the offſpring ſhall belong to both would be vain. If the right of property were alone ſought, he would have omitted intercourſe with the wife of another, and purchaſed a ſlave: *or, if he procreated the child* to have a ſon begotten from love of pleaſure, *or ſpurious offſpring*, he muſt have acted under the ſole influence of luſt.

Since YÁJNYAWALCYA calls a twice-married woman her who is again eſpouſed with ſolemn rites (Book IV, v. CLX); ſince the words "forſaken by her lord" occur in the text of MENU (CCLXIX); and a ſimilar term (*viháya*, deſerting; a derivative from the verb *há* to deſert,) occurs in the text of CÁTYÁYANA (CCLXVIII); and ſince it is a rule that reaſoning muſt not be employed where the ſenſe of the text is obvious: therefore a ſon begotten on the wife of another, with the aſſent of her huſband, is not acknowledged to be the ſon of a woman twice married; nor is the ſon of the fourth diſloyal wife, as deſcribed by NÁREDA (Book IV, v. CLVIII 8), any more than the ſon of the firſt diſloyal wife, and the reſt, acknowledged to be ſon of a woman twice married. It ſhould not be objected; then BUDA would not be ſon of CHANDRA. Gods are not liable to be reproached by man: otherwiſe VYÁSA would not be ſon of PARÁSARA; for SATYAVATÍ could not by any means be deſcribed as a twice-married woman, ſince ſhe was not previouſly connected with any man. Again; ſince theſe are not included among ſons by twice-married women, they might fall within the deſcription of a ſon any-how produced *irregularly*, who is mentioned by VISHNU as twelfth in rank (CLXXXV): ſtill the perſons inſtanced are ſuperior in rank, through the efficacy of devotion and power, as VISWÁMITRA, ſpringing from a military race, became a *Bráhmana*; but if devotion and power be wanting, ſuch a ſon is of inferior rank. Accordingly perſons ſo born have been mentioned by Sages, with ſome difference of opinion, as ſuperior almoſt to every ſon; and Authors have derived a ſettled rule from the diſcrimination of devotion and the reſt, and from *tranſcendent* virtue.

If this be propoſed, ſome reply, although YÁJNYAWALCYA, when treating of the diſtinction between a woman twice married and a diſloyal wife, deſcribes the twice-married woman as one again

again eſpouſed with ſolemn rites, ſtill the word *(punerbhú)*, from which the term "ſon by a twice-married woman" *(paunerbhava)* is derived, ſignifies only a woman who goes to a ſecond lord. The term which ſignifies deſertion in the text of Cátyáyana muſt neceſſarily be affirmed to be merely illuſtrative; elſe there would be a contradiction between two legiſlators, one deſcribing the deſertion as the act of the huſband (CCLXIX), the other as the act of the wife (CCLXVIII). How can an unmarried woman, who goes, through luſt, to any man ſhe may chooſe, be called a twice-married woman; the word "twice *or again*" is irrelevant? It ſhould not be argued that her ſon is not conſidered as ſuch. To deny the filiation of a ſon produced by a woman not previouſly enjoyed by another, at the ſame time acknowledging the filiation of a ſon produced by a woman *previouſly* enjoyed by another, is inconſiſtent with reaſoning: even he is exhibited as relieving his father from *religious* debt in the following text, which cannot be reſtricted *to a limited ſenſe*.

## CCLXX.

Sanc'ha and Lic'hita, Háríta and Pait'hínasi:—A father thrives by a ſon any-how produced, and is indeed relieved from *religious* debt by his oblation of funeral cakes to progenitors.

To the queſtion propoſed theſe lawyers reply, her male iſſue muſt be included among ſons of unmarried girls. It ſhould not be objected, that Sages have not mentioned the offspring of an unmarried girl as ſon of the procreator. Though not expreſsly mentioned by Sages, it is conſiſtent with the reaſon of the law: or the child begotten by a man himſelf, on the wife of another, may be technically named *his* ſon by a twice-married woman, although the term "twice married" be not pertinent. In this manner the ſuperior and inferior rank of various ſons by twice-married women, ſettled according to the various opinions of many lawgivers, and their right of inheriting from kinſmen ordained *by ſome legiſlators* and denied *by others*, are juſtified; and in the ſame manner the text of Vishnu, which names the ſon by

by a twice-married woman as fourth in rank (CLXXXV), may be vindicated.

If the ſon of a paternal grandfather begotten in lawful wedlock, and the ſon of a brother begotten on a twice-married woman, are competitors for a ſucceſſion, which of them ſhall obtain it? This muſt be regulated by the right of offering the funeral cake. The nephew, being the ſon of a woman again eſpouſed with ſolemn rites, whom VISHNU and the reſt intend by "the ſon of a woman twice married," is the legal heir; but if he be ſon of a woman not eſpouſed with ſolemn rites, he is not competent *to inherit*; for that is forbidden by MENU. It ſhould not be objected that a ſecond marriage is ſtated in the text of MENU (CCLXIX); yet he deſcribes the ſon by a twice-married woman as incapable of inheriting from a kinſman (CLXXVIII). The difficulty is removed by affirming that he declares this ſon incapable of inheriting from a kinſman, ſuppoſing him to be the ſon of a woman not eſpouſed with ſolemn rites by *the father* himſelf. Nor ſhould it be argued, that, the inſtitutes of MENU prevailing over every other code, the ſeries declared by him ſhould alone be received as the general rule, and the ſeries propounded by others ſhould be admitted only in the caſe of tranſcendent virtue; and thus a ſon given, poſſeſſing a common degree of virtue, and the ſon by a twice-married woman, being tranſcendently virtuous, ſhall have equal ſhares, and ſhall inherit from kinſmen. *As* in the caſe of witneſſes, ſhould an equal number *on both ſides* give contradictory evidence, it is directed by YÁJNYAWALCYA that their characters ſhall be taken into conſideration, ſo in the preſent caſe alſo the ſame *principle* muſt be adopted. Nor ſhould it be objected that in this caſe equality muſt be affirmed, becauſe the holy legiſlators are very numerous, and it would be improper to notice a great or ſmall difference in the number *of lawgivers eſpouſing the ſeveral opinions*. Still that law which is conſiſtent with reaſon muſt prevail, as directed by YÁJNYAWALCYA: "if two texts differ, reaſon, *or that which reaſon beſt ſupports*, muſt in practice prevail." Now reaſon ſhows that affinity dependent on birth, ſhall prevail over affinity dependent on acceptance of donation.

CCLXXI.

CCLXXI.

MENU :—Though ſuch as are called ſons for that purpoſe *(to prevent a failure of obſequies)*, but were produced from the manhood of others, belong in truth to the father from whoſe manhood they ſeverally ſprang, and to no other *except by a juſt fiction of law.*

The receptacle is inferior to the ſeed: this muſt be acknowledged.

Other ſons, ſays VRĬHASPATI (CCXLVI), namely the ſons of a wife, of an unmarried girl, and of a twice-married woman, ſhall *reſpectively* ſhare a fifth, a ſixth, and a ſeventh part. HÁRÍTA allots a twentieth part to the ſon by a twice-married woman (CCXIX). The *Brahme purána* aſſigns to him the next ſhare *after the ſon bought;* that is an eleventh part. SANC'HA and LIC'HITA allot one ſhare to each of the reſt, namely to the ſon by a twice-married woman, the ſon of an unmarried girl, and the ſon of concealed birth.

VRĬHASPATI mentions the ſon of a twice-married woman and others with diſeſteem (CCII). The reaſon of it is the adultery of their mothers.

## SECT. VIII.—*On the Son Given.*

YÁJNYAWALCYA, having noticed ſix ſons affiliated through a right either to the ſeed or to the receptacle, proceeds to mention ſix other ſons adopted without any ſuch claim; and firſt he deſcribes the ſon given, becauſe he holds pre-eminence among them.

CCLXXII.

YÁJNYAWALCYA :—That ſon whom his father, or his mother *with her huſband's aſſent*, gives *to another*, ſhall be conſidered as a ſon given.

He is ſeventh in rank, according to YÁJNYAWALCYA; for he deſcribes him immediately after noticing the ſixth or ſon by a



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twice-married woman. The particle (*vá*, or,) is in this place connective*, which is one of its senses, according to AMERA. Thus, if both his father and mother give him *to another person for adoption*, he truly becomes a son given: this supposes both his mother and father to be living; but if either of them be dead, the boy may be given by the survivor: however, should the man be deceased, the child must not be given by the woman without the assent of her husband *declared before his death*, as ordained by a special text.

## CCLXXIII†.

VAŚISHT'HA:—A son formed of seminal fluids, and of blood, proceeds from his father and mother as an effect from its cause: both parents have power, *for just reasons*, to give, to sell, or to desert him; but let no man give or accept an only son, since he must remain to raise up a progeny for *the obsequies of* ancestors. Nor let a woman give or accept a son, unless with the assent of her lord. He who means to adopt a son, must assemble his kinsmen, give humble notice to the king; and then, having made an oblation to fire with words from the *Véda*‡, in the midst of his dwelling house, he may receive, as his son by adoption, a boy nearly allied to him, or, *on failure of such*, even one remotely allied: but if doubt arise, let him treat the remote kinsman as a *Súdra*. *The class* ought to be known, for through one son the adopter rescues many *ancestors*.

As an *only* son should not be given, so he should not be sold or

* This is disputed in the subsequent commentary. I have therefore translated the word in its common disjunctive sense, and supplied the same reservation as in the text of MENU, V. cclxxv. T.

† A part of this text has been already cited in Book II, Ch. IV, v. viii. T.

‡ With the mysterious words mentioned by MENU. Chapter II. v. lxxvi. T.

or deserted. Sale is a great offence, *even though made* in a season of calamity, when a maintenance cannot be provided; desertion is a great offence, because the family becomes thereby extinct. Thus the *Pracáśa*. Let no man accept *an only son*, because he should not do that whereby the family *of the natural father* becomes extinct: but this does not invalidate the adoption of such a son *actually* given *to him*. Some hold, that if an only son be given by a woman unauthorized *by her lord*, the donation is void, as if he had been given by a person who was insane or the like. "Let not a woman give a son without the assent of her lord:" the reason is, that a thing belonging to two persons ought not to be given by one without the assent of the other. If a donation of joint property, made by one parcener, be valid, why *should* not the gift of a son, who belongs in common to his father and mother, *be likewise good in law?* If single property, arising from the single efficient act of two persons, be attributed to both, then, should the thing be given away by either of them, that property being devested, the right of both is lost: but, in this case, a son being produced by distinct acts, one person furnishing seminal fluids, the other furnishing uterine blood, distinct property is created; and the gift made by one annuls his or her property only. It should not be objected, that the acts of procreation would be several, from the difference of time and persons. Although the acts be several, the procreation is one. Thus the reason why a son has property in the paternal estate, must be deduced from his birth being caused by his father; but the reason of a mother's property in her son must be deduced from his proceeding from her blood; and the reason of a father's property, from the child's proceeding from his seminal fluids. Although the same cause might here have been invariably assigned for the same effect, that must not be done *in the present instance*, *because* these *different causes* are established in conformity with the texts of Sages.

From the phrase "let not a woman give a son," as from the expression "let not a parcener give away joint property," does it not appear simply, that the gift ought not to be made, but the donation is not void? Then it should have been only said, "let not one give a son *without the assent of the other;*" for the husband ought not, by his sole act, to aliene property

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held in common with his wife. The husband, therefore, has the primary right over his ſon, as appears from texts (CCLIII 1 and CCLII 4); but the wife, being dependent on him, has a ſecondary property, becauſe the ſon was produced from the united operation of her blood *with the ſeminal juices of the father*, and becauſe ſhe bore the child in her womb. Hence gift made by a dependent perſon, without the aſſent of the principal owner, is void: and this is accurate, according to the opinion of thoſe who contend for the right of the huſband to the property of his wife (Book II, Chapter IV, v. LVI).

"Nor let a woman accept a ſon *without the aſſent of her lord*." If a ſon be accepted by a wife without the aſſent of her huſband, her property in that child is valid, but not his performance of filial duties: he can neither poſſeſs the heritage, nor offer the *śrádd'ha* or the like, for it is ſhown that the adoption of a ſon is the act of the man; in no code of law is it found that adoption can be the act of the woman. It ſhould not be argued, that the offspring of an unmarried girl and the reſt become adoptive ſons through the act of a woman. Although ſhe produce the child through luſt, his filiation is valid by the choice of the father, or by the authority of law, not by the choice of the woman. Thus the mention of gift, by the joint act of the father and mother, is intended to ſhow the means of effecting a donation productive of no immoral conſequence; but the gift made by the man alone is valid. However, the mother's claim is not annulled by his donation. But a child belonging to his natural mother, and to his adoptive father, is not truly conſidered in practice as a ſon given; the adopter ſhould therefore obtain the aſſent of both parents.

The form of adoption is ſubjoined; "he who means to adopt a ſon, muſt aſſemble his kinſmen:" this is intended to ſhow, that a ſon known by kinſmen *to have been adopted*, ſhall take the inheritance, and perform the *srádd'ha* and the like; and they ſhall not moleſt him. The notice given to the king is intended for the ſame purpoſe. The oblation to fire with holy words from the *Véda* is an *uneſſential* part of the ceremony: even though it be defective, the adoption is *neverthele ſs* valid; for no one admits that the principal object is unattained if an *uneſſential* part be defective.

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Under the rule of TACSHA*, ("what is *moral or* imperceptible, is not a part of that which is *physical or* perceptible,)" the oblation to fire with holy words, which is *relative to* moral *effects*, and must be deduced from the positive precept alone, is not an *unessential* part of the investiture of property, nor of the adoption of a son, who is physical, or perceived by the senses; in like manner as the sacrifice on *consecrating* the site of a building is not an *unessential* part of the house, but an important act. The meaning is this: the rule of JAIMINI, ("that which is unproductive is a part of that which is productive, and which it attends,)" shows, that an act which is associated with the principal act, or with one producing the effect chiefly considered, and which confirms the moral merit proceeding therefrom, but which does not itself produce the effect chiefly considered, is an *unessential* part: now a house or the like, being perceptible *or physical*, does not produce moral merit; hence the definition of *unessential* part is inapplicable to the sacrifice performed on consecrating the site of a building; but it is not *true*, that the wall cannot be erected, nor the house roofed, without a sacrifice to consecrate the ground. Is it therefore proper to affirm, that, without an oblation to fire with holy words from the *Véda*, the moral benefit of adopting a son is not obtained; but it is, if that oblation be duly made; since the *simple* adoption of a son does not produce moral merit?

If this be proposed, the answer is; admitting this *oblation* to be an independent and principal act, like the sacrifice on consecrating the site of a house, still the adoption is not void if that *oblation* be omitted. But, in fact, moral merit is produced by the adoption of a son; for it has no other effect. It is not by that adoption that the child becomes a son; for he was already born *the son of another*.

If it be objected, that he is made the son of *the adopter* himself, that objection is answered by asking, does that affiliation to *the adopter* himself consist in the property vested in him, or is it attended with the power of taking the inheritance, and performing the *śrádd'ha*? The first is not accurate; for the property vested in the accepter is universally admitted, even though the oblation

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* Among the rules of prosody and rhythmical recitation attributed to the fabulous serpent of hell called TACSHAÇA. T.

to fire with the mighty words* *earth, sky, heaven*, be omitted, as it is if tonſure and other ceremonies be neglected; ſince the law, in that caſe, declares him a ſlave (CLXXXII). If the ſecond be affirmed, it may be aſked, does the power of performing the *śrádd'ha* ſignify ability to do acts relative to funeral obſequies and the like? If it be performed by a traveller, although acceptance *for the purpoſe of adoption* had not taken place, his offer of the funeral cake does not become valid by his recital of the proper texts from the *Véda*. If it be urged, *by way of reply*, that the deceaſed does not attain bliſs by his recital of holy texts with the oblation of a funeral cake, the anſwer is, this reaſoning is identical: for bliſs, *it muſt be ſaid*, is attained through an act performed by one who was qualified for it; and the qualification conſiſts in the performance of an act capable of effecting the attainment of bliſs: theſe *propoſitions* reciprocate.

It may be argued, that the attainment of bliſs through the act *of religion* performed by one who was qualified for it, muſt be thus particularly explained: *bliſs is attained* through the act of religion performed by a ſon of the body, or by a ſon of the wife for a man who leaves no iſſue by himſelf begotten: it muſt be therefore affirmed, that, on failure of ſuperior ſons, bliſs is attained through the act of religion performed by a ſon accepted *for adoption:* the right of performing acts capable of effecting the attainment of bliſs, is therefore aſcribed to this ſon in conſequence of acceptance; and the aſcribing of that right to him ariſes from making that the object of the acceptance, and the ſupport whereon reſts the object ſpecially contemplated in performing the ſacrifice with myſterious words from the *Véda*. To this argument the anſwer is, the acceptance and other *acts of adoption* being paſt before the attainment of bliſs, a particular faculty, called moral merit, muſt be eſtabliſhed†. It ſhould not be

* Collectively called *Maháwyáhrĭti*. See MENU, Chapter II. v. 76.

† A particular *ſanſcára* called *apúrva:* I have explained in former notes the idea which ſeems to be attached to *ſanſcára*, which I tranſlate 'faculty.' *Apúrva*, here tranſlated merit, is, in a general ſenſe, the relation between cauſe and effect not conſecutive. According to what ſyſtem *apúrva* is conſidered as a *ſanſcára*, I know not: in dialecticks they are diſtinct qualities; and the *Mímánſa* does not admit *apúrva* in a philoſophical arrangement. However, the relation between a paſt event conſidered as a cauſe, and a remote event conſidered as its effect, may be

be argued, that, although acceptance be a paſt event, the paſt exiſtence * of acceptance operates to produce the effect. Were it ſo, the paſt exiſtence of an act always producing the conſequence, there would be no argument to prove the moral relation of cauſe and effect; or, admitting that the paſt exiſtence of acceptance does produce the effect, it would be *phyſical or* perceptible: but this has been already anſwered.

Is not the oblation to fire with myſterious words no part of the adoption, but independent of it, and an attribute of him who is qualified *for performing obſequies?* "An act of religion performed by one who was duly qualified," therefore ſignifies an act of religion performed by an adopted ſon, with a view to whom an oblation to fire with myſterious words has been made; and thus, ſhould the oblation to fire be omitted, the power of performing obſequies being conſequently wanting, the affiliation is null. It ſhould not be objected, that ſince it is burdenſome to make both *acceptance for adoption and the oblation to fire* attributes of the perſon qualified *to perform obſequies*, acceptance alone ſhould be conſidered as an attribute, *or requiſite condition.* There exiſts no argument, by which it can be diſtinguiſhed whether the acceptance, or the oblation to fire, ſhould be conſidered as the requiſite condition; both ought therefore to be deemed attributes of him who is qualified to *perform obſequies.* Again; ſince it is true in law, that affiliation is not *complete* by acceptance alone, therefore tonſure and other ceremonies performed by the adopter's own family muſt be alſo affirmed to contribute *to affiliation*: in like manner, ſince there is no reaſon for ſelecting one in preference to the other, the oblation to fire with holy words from the *Véda* ſhould alſo be conſidered as contributing *to adoption.* But the notice to kinſmen, and other formalities appearing to be intended for an evident *or popular* end, an imperceptible *or moral* purpoſe ought not to be attributed to them. Is it not thus proved, that adoption is not valid, unleſs

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be called a faculty or power to produce that effect, if there be any ſubject to which the faculty can be attributed: in this view, the ſon has, in conſequence of adoption, the faculty of procuring bliſs for his father. T.

* It has been already explained, that, according to one ſyſtem of philoſophy, the ceſſation or paſt exiſtence of an event is conſidered as poſitive, and ſubſiſting, for the purpoſe of connecting with it another event conſidered as its effect. T.

an oblation to fire with holy words from the *Vêda* be duly performed?

When this argument is propoſed, the anſwer is; yet notice to the king and convocation of kinſmen are neceſſary for a ſeen *or ſecular* purpoſe, namely, that the adopter's brothers and the reſt may know the name and claſs *of the child*, and ſo forth, after thoroughly inveſtigating *all circumſtances*: for this reaſon *(the purpoſe not being indiſpenſable)*, affiliation is in ſome inſtances valid, even without this *uneſſential* part *of the ceremony*. In like manner, ſhould the oblation to fire be partly omitted in conſequence of inability *to complete it*, the adoption is ſometimes good in law, as marriage and the like are valid in ſimilar circumſtances.

The meaning of that obſervation of VÁCHESPATI BHATTÁCHÁRYA may be thus explained: if the intention of the party be only declared in this form, "I give you this damſel," ſhe continues a maiden, and the accepter does not become her huſband; *on the contrary*, ſhe may be given to another, as a girl called PRĬT'HÁ was beſtowed by the father of VASUDÉVA on CUNTIBHÓJA, and afterwards given by him to PÁNDU: but if the intention of the party be thus expreſſed, "I give this damſel to be *thy* wife," ſhe becomes the wife of the accepter, and cannot with propriety be given to another; this alone conſtitutes marriage: ſo, if a gift be made declaratory of property only, then property alone is *conferred*, as in the caſe of a ſlave; but if the *declared* intention be expreſſed in theſe words, "I give him to you as a ſon," and if *the accepter's intention be thus* expreſſed, "I take him as a ſon," he becomes a ſon; nothing elſe is required.

Since the *Cálicá purána* declares filiation null, if tonſure and other ceremonies, preceded by the enunciation of the family name, be omitted (CLXXXII), this is neceſſary to aſſiſt adoption. But ſince no one has declared that filiation is null if the oblation to fire with holy words from the *Véda* be omitted, the validity of adoption by gift and acceptance only, without ſuch an oblation, is fully proved by reaſoning. However, as a ſon is produced from fecundation without the recital of holy texts from the *Véda*, but a ſon is perfected by the recital of them (for YÁJNYAWALCYA declares, "ſin, ariſing from the ſeed and the womb,

womb, is expiated *by the ceremony of tonſure, and by thoſe which precede it*);" ſo, even without an oblation to fire ſanctified by holy words from the *Véda*, adoption, the object of that act of the will called acceptance, is indeed valid, but no ſpecial perfection ariſes. On the other hand, tonſure and other ceremonies, preceded by announcing the family name of the natural father, having been *already* performed, the claim to the original family cannot be forfeited; how then can the child become ſon of another? On this and ſimilar reaſoning is founded the text of the *Cálicá purána*, which we revere as the commandment of our maſter. Without minute inveſtigation, it is admitted, that the adoption of a boy, for whom tonſure and other ceremonies had been *already* performed after announcing the family name of his natural father, is void.

It ſhould be here conſidered, that, if the *adoptive* father die after taking *as* a ſon *a boy* under the age of five years, but tonſure and other ceremonies have not been performed, the adoption is nevertheleſs valid; hence the celebration of theſe ceremonies, with the family name of the *adopter* himſelf, ought not to be conſidered as contributing *to the adoption;* but the circumſtance of tonſure not having been performed with the family name of the natural father *ſhould be ſo conſidered.* Whence is this deduced? From the text of the *Cálicá purána* (CLXXXII 1), which ſhows, that the circumſtance of tonſure and other ceremonies not having been performed with the family name of the natural father, does contribute *to the validity of adoption.* It ſhould not be argued, that, ſince there are no grounds of ſelection, both ought to be conſidered as contributing *thereto.* The purpoſe being anſwered by one, it would be burdenſome to eſtabliſh that both contribute to adoption; and there is no occaſion for ſo doing. Nor ſhould it be argued, that occaſion ariſes from the text laſt quoted (CLXXXII 1), which invalidates the adoption of a ſon given, for whom tonſure and other ceremonies had been previouſly performed with the family name of his natural father, and are afterwards performed with the family name of the adopter; and from the other text (CLXXXII 2), which declares adoption void unleſs tonſure and other ceremonies be performed with the family name of the adopter: there is conſequently ſeparate occaſion for both, and both ought therefore to

 be

be affirmed neceſſary concomitants *of adoption.* The obvious ſenſe refers to one only; for the initiation being completed by the ceremony of tonſure already performed, the child is not initiated under the family name of the adopter, but his initiation under the family name of his natural father remains in full force: thus his adoption may be invalidated by a ſingle text. It ſhould not be objected, that, were it ſo, there would be no ground of preference to determine which ſhall be affirmed to contribute to adoption. Since his filiation, prior to the ceremony of tonſure performed under the name of the adopter's own family, muſt be acknowledged, it muſt be a requiſite concomitant of adoption, that another family name have not been previouſly uſed: for, if he did not become a ſon before the ceremony of tonſure be performed, how could the father announce the triple ſet of oblations*, which is a part of that rite, *in theſe words*, for the "ſake "of commencing the ceremony of tonſure for my ſon, belong-"ing to the original family named ſo and ſo?" He would not then be ſon *of the adopter*, nor deſcendant of the ancient Sage who is the ſource of the family. Neither does the triple ſet of oblations alone conſtitute the ceremony of tonſure, for the family name would be changed by the performance of that alone. It ſhould not be argued that the ſenſe of the word tonſure ſhould be extended to this *śrádd'ha*, which is a part of the ceremony; elſe the text would be inaccurate, ſince the family name is not announced during tonſure, which is the principal object of the ceremony. Were it ſo, if the triple ſet of oblations only had been made under the name of the natural father, and tonſure had caſually remained unperformed, a boy, for whom it was afterwards performed under the family name of the adopter, by whom he was taken under the age of five years, would not be a given ſon duly adopted. Say not, that is admiſſible. The law does not ſhow adoption to be void, when the principal part *of this ceremony* had not been *previouſly* performed. It ſhould not be ſaid, that the word tonſure muſt extend to that part of the ceremony which effects the purpoſe, but that the *śrádd'ha*, not effecting the purpoſe conſiſting in tonſure, is not included in that

* *Nándímuc'ha s'rádd'ha:* but the balls or funeral cakes are not uſually offered in this *s'rádd'ha:* the oblations conſiſt of barley, water, and *cus'a* graſs. T.

that term. There exiſts no argument on which this can be eſtabliſhed.

The adoption of a child taken at the age of five years, but for whom tonſure and other ceremonies were afterwards performed under the family name of his natural father, would be neverthelefs valid : for the ceremony of tonſure performed under the family name of his natural father is void, becauſe he did not then belong to that family ; and becauſe the ceremony is performed by one who had no right to do ſo, ſince he truly became ſon of the adopter, and certainly belonged to his family, not having being already initiated under the family name of his natural father when the adoption took place. It ſhould not be objected, that, were it ſo, the text of the *Cálicá purána* (CLXXXII 1) would be unmeaning. That text is only intended to invalidate the adoption of a boy for whom the ceremony of tonſure had been performed within the third year, and who is *afterwards* accepted *for adoption* within his fifth year. In this caſe, whoſe ſon does he become? He becomes the ſlave of the perſon who accepted him *for adoption*.

On this ſubject it is ſaid, the inference ought to be deemed admiſſible ; for the ceremony of tonſure *thus performed* is void, and a repetition of it is needed : but that cannot take place, ſince there is no perſon capable of performing it, becauſe he is not truly ſon of either ; for you muſt affirm, that, by the relinquiſhment of the giver, the boy ceaſed to be his ſon, or to belong to his family, and that his affiliation is void. It ſhould not be objected, that the text of the *Cálicá purána* (CLXXXII 2) would be unmeaning. It is intended to confirm the ſenſe of the preceding verſe (CLXXXII 1). A boy therefore, being accepted under the age of five years, is in law a true ſon of the adopter, even though the ceremony of tonſure have not been performed. Accordingly, if his filiation were incomplete until his marriage, which is included in the term " and the like" (CLXXXII 2), he might eſpouſe a damſel related to the adopter, within the degree of a *ſapinda;* and the affiliation of one whoſe marriage happens not to take place, would be void ; and tonſure and other ceremonies for men of the ſervile claſs, being optional, if theſe be not performed, the adoption would be invalid : theſe and other difficulties are obviated ; for the implied object is to except *one*

*for*

*for whom* the ceremony of tonſure *has been performed* under the family name of the natural father.

It ſhould be here remarked, that no law is found expreſſing that a ſon ſhall not be adopted by one who has not contracted a marriage; nor any law, that a boy, *known by his family name to be* of the ſame primitive ſtock, ſhall not be adopted. But, in fact, if the adopter wilfully omit any of the ceremonies, either that tonſure, or any other which is ordained for his claſs, the boy becomes a ſlave; if the adopter die, while diſpoſed to perform thoſe ceremonies on a day ſubſequent to acceptance, the adoption is nevertheleſs valid: that diſpoſition muſt be underſtood to be an intention *which may be expreſſed in theſe words*, "I will perform them." This ſhould be admitted as a rational interpretation; elſe, his affiliation being imperfect when ſuch an adopter died, the eſtate would be taken by a brother's ſon; afterwards, when the affiliation was perfected by tonſure ſubſequently performed *by the kinſmen*, the ſon would be deſtitute of property; or, being then unconcerned with mourning, he might himſelf cauſe the ceremony of tonſure to be performed, and *thus becoming a true ſon*, preſent fire *to the funeral pile of the deceaſed;* which would be inconſiſtent with common ſenſe.

In the double ſet of oblations, to whom ſhall he offer the funeral cake, with which he utters the words "maternal grandfather?" On this ſome remark, that to ſay he ſhall offer it to the father of her with whom his adoptive father is married, would not be pertinent; for, a ſon adopted by one who had no wife, would have no maternal grandfather's line. It ſhould not be argued, that one who has no wife, being *conſequently* excluded from the order of a houſeholder, cannot properly adopt a ſon, this being an act mentioned when treating of the order of a houſekeeper or married man. There is no argument *to ſupport ſuch an induction.* Accordingly, it is recorded in the *Bhărata*, that PÁNDU, having gone to the foreſt* with his wife, adopted ſons begotten on her *by ſtrangers;* and it is recorded, that VYÁSA and others, who had contracted no marriages, nevertheleſs obtained ſons, namely 'SUCADÉVA and others. He who happens to have no wife, (whether he have contracted no marriage, or his wife have died or be forſaken by him,) either has not completed the

* And having conſequently entered into the order of devotion. T.

the ceremonies which perfect *twice-born men*, or belongs to no order; but it is contrary to common sense that, although the form of adopting a son given have been observed, the adoption should be void.

If a son be adopted by a man married to two wives, he would have two maternal grandfathers, and *would claim as maternal ancestry* both their lines of forefathers. This seeming difficulty is thus reconciled: although there be two sets of maternal ancestors, they should be jointly considered as manes of ancestors, and they should be thus named in performing the *śrádd'ha*, "such a one maternal grandfather, sprung from such a primitive stock! such a one maternal grandfather, sprung from such a primitive stock! to thee *(to each of you)* this funeral cake is offered," and so forth, as is done by the son of the wife considered as a son of two fathers. Thus some *reconcile the difficulty*.

Males only need sons to relieve them from the debt due to ancestors. Accordingly, the sage MANDAPÁLA, desiring admission to a region of bliss, but repulsed by the guards, who watch the abode of progenitors, because he had no male issue, accepted a bird for his consort, that he might earlier obtain a son; and it is recorded in the *Mahābhārata* and other works, that JARATCÁRU, RUCHI, and other males, have taken wives for the sake of obtaining male issue, but *it is* no-where *said* that a woman *has taken a husband* for that purpose. Accordingly, in the double set of oblations, it is indispensably necessary that the son should perform the *śrádd'ha* for the paternal line, not for the line of his maternal grandfather: but it is simply reprehensible in one who performs the *śrádd'ha* for the paternal ancestors, not to perform it also for the maternal grandfather and his progenitors. Consequently, since the *śrádd'ha* may be performed without noticing the maternal grandfather's line in a subordinate double set of oblations and the like, the *śrádd'ha* for the maternal ancestors is not requisite to the completion of the obsequies performed in the dark fortnight *of `Aswina*. This observation of RAGHUNANDANA and others is accurate. Accordingly a widow, though she may perform acts of religion without consent previously declared by her deceased lord, cannot, *without such consent*, adopt a son given; for the text of VASISHT'HA expresses, "let not a woman give or accept a son," &c. (CCLXXIII). But, if her husband assented,

ſented, ſhe may adopt a ſon given, as a ſon of the wife *is raiſed up to a huſband by his conſent*; elſe it ſhould have been expreſſed in the law, "he ſhall not be the ſon of her huſband unleſs *adopted* with the aſſent of her lord, but ſhall be her own ſon to perform her obſequies and take her inheritance." A ſon given is therefore the child, not of his *adoptive* mother, but of his adoptive father only.

Then, what occaſion is there for any relinquiſhment on the part of the natural mother? There is none according to the *Retnácara*. That opinion will be forthwith explained. But in requiring joint relinquiſhment on the part of both *parents*, the texts of Sages are liable to no reproach. The reaſon is, that it is not admitted that one ſhall be father of a ſon given, and the wife of another be his mother. Some indeed admit that ſituation of a ſon illegally begotten, conſidering him as one of the various ſons by twice-married women; but 'SÚLAPÁNI and the reſt do not admit it. Conſequently, with the followers of the *Yajurvéda*, a ſon given ſhall perform a *ſ'rádd'ha* to the paternal grandmother and the reſt inſtead of a maternal line, like a man whoſe mother became an outcaſt: but he is entitled to take the wealth and perform the obſequies of his adoptive mother, like the ſon of a contemporary wife and the reſt. This, *ſay ſome lawyers*, is demonſtrated. But that is wrong; for *the author of* the *Párijáta*, UDAYACARA, CHANDÉSWARA, and others, who follow not the dictates of predeceſſors, forbid the raiſing up a ſon of the wife and the like if there be a ſon by a contemporary wife, and virtually admit the adoption of a ſon given on failure of iſſue by contemporary wives, provided authority have been received from the huſband.

But the maternal grandfather's line is the paternal anceſtry of the natural mother, as obſerved by VÁCHESPATI BHATTÁÇHÁRYA, from an expreſſion found in the *'Srádd'ha Chintámeni*, "the maternal grandfather's line is common to all." In that remark he delivers this opinion: by the father's relinquiſhment, his funeral rites, and the ſon's claim to his eſtate and family, are annulled; by the mother's relinquiſhment alſo, the ſon's claim to her eſtate and family is cancelled; but the father of the natural mother not having relinquiſhed the child, how can the boy's claim to perform his *ſ'rádd'ha* and take his inheritance be annulled? The *ſ'rádd'ha* for a maternal grandfather is not a conſequence

of

of his property, for he has no property in his daughter's ſon; it is grounded on the birth of the child from a daughter procreated by him, and that deſcent is not in this caſe loſt. If it be aſked, *ſince* his deſcent from his father and mother likewiſe is not loſt, ſhall he not therefore perform the *ſ́ráddʼha* for them alſo? *the anſwer is*, the right of performing obſequies and the like for a father and mother does not ariſe from birth alone, but from the relation of a ſon to his parent: if he be forſaken, although the deſcent remain the ſame, the relation of parent and child does not ſubſiſt, for he is not numbered among ſons; and although the definition of a ſon born in lawful wedlock be applicable, he muſt be excepted under the authority of the law, ſince thoſe who are technically called ſons are alone qualified to perform the *ſ́ráddʼha* and the like.

Still ſhall he not take the inheritance and perform the obſequies of the natural father of his natural father; for grandſons, not being technically ſo named like ſons, "born from a ſon" is the definition of a grandſon in the male line? One born from a ſon is not *the meaning of* "grandſon in the male line," but ſon's ſon is *the meaning of that term;* elſe the adopted ſon of a ſon would not be a grandſon: and, if that inference were deemed admiſſible, it would be incompatible with the text of the *Brahme purána*.

## CCLXXIV.

*Brahme purána:*—They claim *deſcent from* a different primitive ſtock, are ſeparate in the oblation of funeral cakes, and propagate a diſtinct race*.

It cannot be *true*, that he who is the ſon of a ſon, is not a grandſon in the male line: and it is proper to affirm, that he continues the race of the paternal grandfather. May not the phraſe "propagate a diſtinct race," ſignify "continue the lineage of the father," not "continue that of the paternal grandfather?" It is inconſiſtent with common ſenſe to ſay, that a line of deſcendants, uninterrupted like the ſtream of the Ganges, is the

race

* See the remainder of the text at V. cclxxvii.

race of the father alone, not of the paternal grandfather. Or, if that were deemed admiſſible, the expreſſion "claiming deſcent from a different primitive ſtock,' would be inaccurate; for it ſignifies claiming deſcent from that ſage (CAŚYAPA or another), who is the founder of the family (or deſcribed in the *Véda* as the ſource of deſcent) of a different perſon from the natural father, meaning of courſe the adoptive parent: conſequently, if a ſon, born in a family claiming deſcent from 'SÁNDILYA, be adopted into one which derives its origin from CAŚYAPA, but do not become the grandſon of the adopter's father, CAŚYAPA would not be the ſource of his deſcent. Again; what would be the meaning of "ſeparate in the oblation of funeral cakes?" It does not ſignify bound to offer a funeral cake to a ſeparate perſon, that is, to one different from the natural parent; for, were it ſo, all perſons would be "ſeparate in the oblation of funeral cakes," ſince they preſent ſuch offerings to their mothers and to their paternal and maternal grandfathers and the reſt. Therefore "funeral cakes" muſt here denote relation within the degree of a *ſapinda;* and the term above quoted ſignifies, that the relation by the funeral cake is different from that which exiſted through the anceſtry of the natural father. Hence it is deduced, that, omitting the ſucceſſion of natural progenitors, the funeral cake ſhall be offered, in the double ſet of oblations, to the anceſtry of the adoptive father. Thus it likewiſe appears, that the paternal grandfather enjoys the funeral cake offered by that *adopted ſon.* Or the word *pinda* may ſignify the ſet of anceſtors who have reached the abode of progenitors. Still relation by the funeral cake virtually appears *to be the ſenſe of the word;* for the derivation of the term *prĭthac pinda* exhibits as its ſenſe, "thoſe whoſe ſets of anceſtors are diſtinct." If a brother's ſon be adopted, ſtill, ſince he enters the family of the adopter, the ſet of anceſtors is diſtinct, as a cow and ſheep are different from a cow and goat.

It ſhould not be objected, how can the term maternal grandfather be properly uſed, ſince it ſignifies mother's father; but he (the natural grandfather) is not a mother's father, ſince his daughter is no longer mother *of the adopted ſon?* Although ſhe be not then conſidered as ſuch, yet, ſince ſhe was mother of the child at ſome *former* time, the relation of her father is not loſt; the word

*mâtrĭ,*

*mâtri*, from which the term *mâtâmaha*, or maternal grandfather, is derived, signifies natural mother only; and although such relation cease by her death, still the word mother is used in performing a *śrádd'ha*.

The father's right in his son, who is given away after the death of the mother, is devested by his donation; but, since she has made no gift, shall not the son perform the *śrádd'ha* in consequence of her subsisting right? It should not be answered, that, since the text of VASISHT'HA describes gift as the act of both (CCLXXIII), a son whose mother is dead, ought not to be given; else a son whose father is dead might in like manner be given away by the mother. Since a subsequent phrase, "let not a woman give or accept a son, &c." specially forbids her giving away a son without the assent of her lord, it is thereby intimated, that if the wife be *living*, her co-operation is required for a donation made by the husband; but if she be not *living*, there is no objection to a gift made by the husband singly. When this argument is proposed, the answer is, that inference is admissible. But, in fact, a son whose mother is dead ought not to be given away; it contradicts common sense that one should be father and the wife of another be mother *of an adopted son*. If gift be founded on the co-operation of the mother, then such a contradiction to common sense does exist in this case; for the mother's gift *of the son* becomes necessary. Thus some expound the law.

But CHANDÉSWARA explains the phrase "both parents *(the father and mother)* have power to give a son," the father has *that* power, and the mother has *that* power; for it is a rule that in the apposition called *dwandwa*, each term, whether expressed first or last, is severally taken and intended. The lawgiver also forbids the attempt of a mother to make a gift without the consent of the father: "nor let a woman give or accept a son unless with the assent of her lord." But there is this difference: if the father be *living*, a mother can only make a gift with his assent; but if he be not *living*, *she may do so* even without his *previous* consent.

According to this opinion, the husband's gift of a son is valid without his wife's consent, even during her life-time; but the wife's property in her son is not thereby devested. If this be affirmed, the answer is, what difficulty is there? It may, however, be questioned, how a son given by a widow without authority from her deceased husband, can become the son of a male.



But

But others deduce from the phrafe "both parents have power, &c." that gift is the feveral act of each of them: but a donation by a woman is there forbidden; "let not a woman give or accept a fon unlefs with the affent of her lord." It fhould not be objected that the word mother in the expreffion "both parents (the father and the mother) have power, &c." would be unmeaning. It fhows that fhe may confer an equal right with her own. But in this cafe, even though fhe transfer fuch right, the affiliation is not valid; for the adoption of a fon confifts in *the acquifition of* an equal right with the man's. It fhould not be argued that adoption is valid even in the cafe of a gift made by a widow, becaufe fhe is then independent of her hufband's death; and the accepter acquires property in the fon as it were by occupancy, fince there is no *exifting* claimant of that right. Still fhe cannot properly confer an equal right with that of her lord; and the claim to a fon, acquired by occupancy, is not acknowledged; elfe, property by occupancy in any child whofe father and mother are deceafed being admitted, he would become in law the adopted fon *of a guardian*. It appears that a woman is dependent even during her widowhood, fince a text (CCCCLXXVII 2) requires her to preferve undefiled the bed of her lord.

Again; a fon given by his father, even though his mother be dead, is in law a true fon given. If the donation made by a living mother be difapproved, or if fhe be dead, does not a fon given, though the gift be valid according to this opinion, ftill belong to his mother; for the property of one cannot juftly be annulled by the gift of another? It fhould not be anfwered, that, wives being dependent on their hufbands, the property of the wife is truly devefted by the will of the hufband; for this conftitutes dependence or fubjection. Will and devefture of property cooperating for the fame end, become the *joint* caufes of the effect: and there is no difficulty in affirming, that the power of making gifts and the like, controuled by the will of another, conftitutes dependence or fubjection. Then this fon given would be competent to perform obfequies and the like for his deceafed natural mother? That is admiffible.

## CCLXXV.

MENU:—He whom his father, or mother *with her hufband's*

*husband's assent*, gives to another as his son, provided that the donee have no issue, if the boy be of the same class and affectionately disposed, is considered as a son given, *the gift being confirmed* by *pouring* water.

The particle *vá*, "or," occurring in the text of YÁJNYAWALCYA (CCLXXII), in this text of MENU, and in that of VISHNU (CLXXXV), does it not appear that each of them may severally make the gift? It should not be asserted that the particle *vá* is in this place connective. Were it so, the expression of VASISHT'HA, "nor let a woman give or accept a son," would be unmeaning; the law shows that gift should be the joint act of both parents. It should not be argued that this very maxim is confirmed by the expression "nor let a woman give or accept a son;" else it might be understood that each may transfer his own right. Were such the design, it would be said, "let not one singly give a son," to prevent a donation made by the husband alone: since the text which describes him who is called a son rejected (CCXCI), admits the filiation of a boy forsaken either by his father or his mother, and adopted by a stranger, it might be supposed that one given by either of them became *in law* a son given. It must therefore be affirmed, that the property of both departs if the boy be given by either of them; else, how could a boy forsaken by his mother become *in law* a son rejected?

That inference is denied; for the seeming difficulty is removed if "given by either of them" be explained given by the father, or by the mother with her husband's assent. It should not be objected, that there is no argument on which this induction can be established. The unreasonableness of the ownership of one, being forfeited by the gift of another, is a *sufficient* argument. Admitting that adoption is *in one case* void, because the father's property is not lost by the gift of a mother unauthorized *by her husband*, still the property of the mother, who is subject to the father's power, being devested by his gift, would not her son be incompetent to perform her obsequies and the like? If the property of any one be forfeited by the gift of him to whose power he is subject, then the property of the son in that which was obtained

 through

through the indulgence of the father would be deveſted by the father's *ſubſequent* donation. Therefore the property of the giver alone is deveſted by gift: the adoption of a ſon given is valid by the donation of the father; but, given by the mother unauthorized by her huſband, it is void. Such is the induction. But, ſince it is not a fit practice for a ſon given to perform the obſequies of his former mother, it is proper to take for adoption a boy whoſe mother is living, and who is given both by her and by her huſband. This brief ſtatement may ſuffice.

What ſome affirm to be CHANDÉSWARA's notion is queſtionable. *They hold*, that if an orphan give himſelf, he is a ſon ſelfgiven; but if one whoſe mother is living, and who is beſtowed by her, give himſelf, he is *in law* a ſon given, as ſuggeſted by the particle (*vá*, "or") in the text of YÁJNYAWALCYA (CCLXXII). That the boy's gift of himſelf confers a right equal to his father's, appears from the definition of a ſon ſelfgiven: and this is reaſonable, *ſay theſe lawyers*; for, after the death of the father, his whole wealth becomes the property of the ſon, and a donee has property in that which is given to him by that heir; ſo, after the death of the father, the ſon has a proprietary right over himſelf, and that right is transferred to the donee by his gift: hence a boy whoſe father and mother are living, but who is forſaken by them, becomes by his own donation a ſon ſelfgiven. Would not a boy given by his mother, after the death of the father, thus become a ſon ſelfgiven? That is admiſſible, *ſay theſe lawyers*: but, in fact, a right equal to that of the father is conferred by the ſon's donation; and by the mother's gift every claim is cancelled. That opinion is queſtionable; for adoption conſiſts in *the acquiſition of* a right equal to that of the father: if that be effected by the boy's own donation, he is a ſon ſelfgiven; if it be effected by the father's gift, the boy is a ſon given: ſuch is the diſtinction. But if a boy be given by his widowed mother, a right equal to that of the father is not effected by her donation, but by the boy's gift of himſelf; he ought therefore to be conſidered as a ſon ſelfgiven. It ſhould be here remarked, that, after the death of the father, his ſon's ſon, whoſe own father is dead, has a title to other paternal wealth; but is not acknowledged to have any right over the ſon, for no ſuch right does exiſt over a ſon and a wife: and this is reaſonable.

reaſonable. Thus much, ſay the lawyers, *whoſe opinion was firſt cited*, has been mentioned by way of illuſtration.

CULLÚCABHATTA holds that the father and mother ſhould make the gift with mutual conſent. The reaſoning on which this is grounded muſt be ſought. But in fact that alone is proper. VÁCHESPATI MISRA likewiſe affirms, that adoption is only valid if the gift be jointly made by both parents.

The mother being ſubject to the power of her huſband, her property is deveſted by his gift; but it is not ſo in the caſe of wealth obtained through favour or the like, becauſe there is no ſubjection in reſpect of ſuch property. Thus, if a ſon be adopted by the huſband, the wife has a ſecondary claim to that child, becauſe property is common to the married pair (CCCCXV); and the line of the maternal grandfather is the anceſtry of the adopter's father-in-law. This opinion authors deduce from the gloſs delivered by CHANDÉSWARA on a text cited *in a former Book* (Book III, Chap. I, v. LII 1), and from the gloſs of CULLÚCABHATTA on the ſubſequent text (Book III, Chap. I, v. LII 2.)

The *Retnácara* contains the following gloſs on the text of VASISHT'HA (CCLXXIII): *he who means to adopt a ſon* muſt aſſemble his kinſmen, that the *boy adopted as a* ſon given may *thereafter* obtain a ſhare. Aſſembling his own heirs, he may receive, *as his ſon by adoption*, a boy not remotely allied to him, that is, nearly allied to him, ſuch as the ſon of his own maternal uncle or the like: this is intended for the *better* aſcertainment of the boy's name and claſs. On failure of *near* kinſmen, he may take one not nearly allied to him; for the name and primitive ſtock may be aſcertained by other poſitive proof: the particle *éva* here bears the ſenſe of "even." But if doubt ariſe, that is, if it be doubted by one who adopts a remote kinſman whether he belong to the ſacerdotal claſs or the like, let him treat the boy like a ſon by a *Súdrá*, employing him only in the buſineſs of the houſe. "*For* through one he reſcues many:" becauſe, through one ſon, the adopter ſaves many anceſtors, therefore he ſhould take for adoption a boy whoſe claſs and family are not dubious.

VÁCHESPATI MISRA does not connect the terms "nor let a woman accept a ſon," with the words "unleſs with the aſſent of her lord;" becauſe, even though ſhe have the conſent of her huſband, a woman cannot adopt a ſon *given*; for ſhe can make

no adoption ſince ſhe is debarred from preſenting an oblation to fire with the myſterious words from the *Vēda*, which oblation is a part of the ceremony. That is not the opinion of RAGHUNANDANA, VÁCHESPATI BHATTÁCHÁRYA, and the reſt: it is not reaſonable that the principal act ſhould be unperformed becauſe an *uneſſential* part is prevented: ſince a woman could not make the *requiſite* vow*, (for ſhe is prevented from reciting it in holy ſtrains,) ſhe would be incapable of performing a mere voluntary rite. Like the conſecration and diſmiſſal of a bull, the adoption of a ſon may be completed by an oblation to fire performed through the intervention of a *Bráhmana* †. The ſeparation of the terms "nor let a woman give or accept a ſon," from the words "unleſs with the aſſent of her lord ‡," is thus ſet aſide.

It ſhould be remarked, that, according to VÁCHESPATI MISRA, if a boy who is given by his father and mother conſent to the donation, his adoption as a ſon given is valid; but an only ſon muſt not be given, even though he do conſent. *No ſon muſt be given away againſt his will;* elſe the mention of "aſſent *of perſons intereſted*" (Book II, Chap. IV, v. II) would be unmeaning. That opinion is diſputable; for a boy not older than five years, being ignorant of civil affairs, cannot diſcriminate between aſſent and diſſent. As for what authors affirm as the opinion of the commentator, that a father muſt give a ſon who conſents to it, but, if he be an only ſon, the father ſhall not give him even though he do conſent; that is alſo queſtionable: for, ſince he is not his own maſter, there is no argument to prove that one who does conſent muſt be given.

The ceremonial of adoption is *now* ſubjoined. Having given humble notice to the king, and, after making an oblation to fire with holy words from the *Vēda*, giving gold and winter-corn in conformity with uſage, let the adopter, aſcertaining his name, family and claſs, in the preſence of kinſmen, receive a boy for whom the ceremony of tonſure and the like has not been performed,

* *Sancalpa*; a vow or declaration with which a ſolemn rite is begun. T.

† To this argument the *Mait'hila* ſchool reply, that the diſmiſſal of a bull cannot be undertaken by a woman. T.

‡ According to VA'CHESPATI MISRA the text ſhould be thus interpreted: "nor let a woman give a ſon unleſs with the aſſent of her lord, nor accept one *in any circumſtances.*" T.

formed, whose age does not exceed five years, and who is given by his father or by his mother with the assent of her husband, provided that they have another son. Let him next perform the sacrifice on adopting a boy, *(putrēshti.)* This *putrēshti* sacrifice, say experienced lawyers, must be performed by one who maintains a consecrated fire; but, by him who does not maintain such a fire, an oblation must be made with the mysterious words from the *Vēda*, as directed by VASISHT'HA. In fact, the oblation to fire with holy words from the *Vēda*, which is directed by VASISHT'HA, should precede adoption; the *putrēshti* sacrifice, ordained in the *Cālicā purāna*, should be performed after adoption: this appears from the form of expression used in the texts ("*having made an oblation, he may receive a son;*" and, "*having taken a boy five years old, he should perform a sacrifice**.") At present some omit, through laziness, the sacrifice called *putrēshti*, in the same manner that the ceremony of combing a wife's tresses is not *now* practised. Thus authors direct *the ceremonial of adoption.*

In the *Cālicā purāna*, the texts above cited (CLXXXII and CLXXXIII) are delivered, after premising the son of the body, the son of the wife, the son given, and the son made. "Any other is called a slave" (CLXXXII 2): from this it appears that the claim of the natural father to a son taken for adoption is annulled. "Sons given and the rest" (ibid); the term "and the rest," comprehends sons made by adoption and the like. Hence these must also be adopted under the age of five years; and the ceremony of tonsure and the like must not have been performed under the family name of the natural father; else the boy would be called a slave.

VÁCHESPATI BHATTÁCHÁRYA holds, that, since the text of the *Cālicā purāna* declares void the adoption of a boy for whom the ceremony of tonsure has been performed under the family name of the natural father, the adoption of a boy as a son given, who sprung from the same primitive stock with the adopter, is consequently invalid. Others do not respect that opinion; and they affirm, that the text (CLXXXII 1) implies a prohibition against adopting one for whom the ceremony of tonsure has been performed; but there is no harm in taking the son of a near

 kinsman,

* According to this gloss, "first," which occurs in the text (CLXXXIII), must be explained 'first subsequent act, immediately after receiving the boy.' T.

kinſman, and *afterwards* performing the ceremony of tonſure and the like. Their meaning is this; "under the family name," intends the declaration of that name; it muſt be alſo underſtood, that the natural father, *who has performed the ceremony*, was competent to do ſo; conſequently, the family name of the father being only once proclaimed, (for both do not perform the ceremony,) the adoption *of a boy who has not been ſhorn* is not void.

A man dies after authorizing his wife to adopt a ſon; the ceremony of tonſure and the reſt are ſubſequently performed by another perſon ſprung from the ſame original ſtock with the natural father; ſtill the adoption would be valid, becauſe the ceremony of tonſure was not performed by a natural father competent to do ſo. It ſhould not be objected, that adoption is void if the triple ſet of oblations be offered, beginning with the natural father, and proceeding regularly *to the ſeveral anceſtors;* and the queſtion of competency ſhould not be examined. If the *śrădd'ha* were caſually omitted, there would be no defect in the adoption. On this point it is ſaid the text cited (CLXXXII 1) is intended to except the performance of the ceremony of tonſure previous to the acceptance *of a ſon given;* for, after the adoption, the ceremony of tonſure performed by the natural father is void. It ſhould not be objected, that the word tonſure does not ſignify the initiating ceremony, but the act of ſhaving the head and ſo forth: the word tonſure may with eaſe be made to ſignify that particular ceremony. It ſhould not be objected, that, in ſuch a caſe *as here ſuppoſed*, the validity of adoption is denied by the letter of the law. There is no argument to ſupport that opinion; for it has been already noticed, that acceptance in a certain form is the efficient cauſe of filiation. If a natural father, having given away his ſon, perform the initiating ceremony under his own family name, through miſtake or through knavery, then, although the adoption be valid according to the ſyſtem of law, the text (CLXXXII 2) declares void the relation of the ſon to the adopter, who ignorantly omits to perform the ceremony of tonſure afreſh, becauſe it had been already performed. Such is the opinion of other lawyers.

Some hold that the mere act of ſhaving the head being *the* principal *part of the ceremony*, and the recital of holy texts by a competent perſon, and other formalities, being *uneſſential* parts of it, the ceremony of tonſure is complete by the act of ſhaving the head, done by the natural father, although *uneſſential* parts of the ceremony

ceremony fail. Then the right of tonſure, though performed through miſtake by one who ſuppoſed the legitimate ſon of another to be his own, would be valid? That is admiſſible, ſay theſe authors. But their opinion is erroneous; for, the act of ſhaving the head being ſuggeſted by a precept not ſcriptural*, the performance would be uſeleſs; but the perſon to whom the precept relates muſt be chiefly conſidered, ſince it is ordained that the ceremony of ſhaving the head ſhall be performed by a competent perſon. It ſhould not be argued, that this is a cogent precept, like that for approaching a wife in due ſeaſon. Since compliance with a cogent precept has no reward, the important object of *initiating the boy into* the ſacerdotal claſs would be unattained: or, admitting it a cogent precept in reſpect of the ceremony of tonſure, ſtill there can be no ſuch cogency in the ceremony of feeding the child with rice; for, ſince the body cannot be ſupported without nouriſhment, the cogency could only be deduced from a maxim not ſcriptural. Hence the performance of the ceremony by a competent perſon being required in the caſe of one ſolemn rite, the ſame muſt be eſtabliſhed in the caſe of another. VÁCHESPATI BHATTÁCHÁRYA obſerves, in the new *Dwaita nirneya*†, that the ceremony of feeding the child with rice, being performed by a competent perſon, becomes *a ſtep towards* perfection *or initiation*. Conſequently, from the expreſſion "under the family name of the father," is deduced the invalidity of the adoption of a boy for whom the ceremony of tonſure has been performed in a mode which ſhows that he ſhares the primitive origin of his natural father, or which ſhows that he continues the race of his natural father, for the terms "family diſtinguiſhed by a name indicative of the primitive ſtock," may ſignify race or lineage. AMERA exhibits both terms (*gōtra* and *vanśa*) as ſignifying family. That a boy for whom the ceremony of tonſure had been performed by his natural father, with the omiſſion of ſome *uneſſential* part, ſuch as the treble ſet of oblations or the like, may be legally adopted, is thus diſproved; and the adoption of a boy ſprung from the ſame original ſtock is thus ſhown to be valid: the whole is conſiſtent.

At

* Precepts are diſtinguiſhed into ſuch as are drawn from ſcripture, and ſuch as are drawn from other ſources. Theſe again admit other ſubdiviſions mentioned in a former note. T.

† The old *Dwaita nirneya* was compoſed by VA'CHESPATI MISRA. T.

At prefent, as fome lawyers affirm, the adoption of a fon accepted under the age of five years, by men of mixed claffes, who do not practife the ceremony of tonfure and the like, is valid, even though the fhaving of the head be not in any mode effected.

The adoption of a brother's fon is valid. To this fome object that, fince the text of MENU (CCLXXVI) defcribes a nephew as fon *of his childlefs uncle*, a further adoption as a fon given is not valid; their own legitimate offspring being given by the father and mother to each other, does not thereby become a fon given.

## CCLXXVI.

MENU:—If, among feveral brothers of the whole blood, one have a fon born, MENU pronounces them all fathers of a male child by means of that fon.

The objection is ill founded; for CHANDÉSWARA, CULLÚCABHATTA, UDAYACARA, and the *Párijáta*, explain the text, 'fons given and the reft fhould not be adopted if there be a brother's fon.' No one has faid that, if a brother's fon be adopted through miftake, the adoption is void. As a daughter fhould not be appointed to raife up male iffue, if there be a fon begotten in lawful wedlock, but the appointment if made is valid; fo, in the prefent cafe, or *if a nephew be adopted, the act is good in law*. Admitting the validity of the adoption, fhall not another nephew have an equal or *at leaft* an unequal fhare, fince he alfo is *confidered as* a fon? No; for, YÁJNYAWALCYA pronouncing a nephew to be unentitled to participation if there be a brother, the nephew muft of courfe be confidered as inferior to a fon given or the like. It fhould not be argued, that, if no fon begotten in lawful wedlock, nor wife, daughter, father and the reft, be living, the brother is entitled *to the fucceffion*, and, on failure of him, the nephew and other *heirs*, fuch as fons given and the reft, have an equal or unequal title, according to the ftrength of their claims. The term "fons" being ufed in the plural number in a text formerly cited (CCXXIII), it appears that fons of every defcription are entitled to the fucceffion, although a brother be *left*. Accordingly

cordingly CULLÚCABHATTA obſerves, neither uterine brothers nor parents, but, on failure of ſons begotten in lawful wedlock, the ſon of a wife, and other ſecondary ſons, are heirs to the *deceaſed* father; this is meant, for the right of the ſon begotten in lawful wedlock is deduced from another text (CCXV): but of one who leaves no ſon properly or improperly ſo called, nor a wife, nor a daughter, the father is heir; and, on failure of thoſe and of the mother, the brothers ſhall take the inheritance. Why then is he called a ſon? Becauſe he delivers *the uncle* from the hell called *put*; elſe it would be improper to affirm, that ſons given and the reſt ſhould not be adopted, if there be a brother's ſon; unleſs he delivered *his uncle* from the hell called *put*, there could be no ſufficient reaſon for not making an adoption. Conſequently, he who is adopted as a ſon given, has a right to poſſeſs the inheritance and perform obſequies, although there be another nephew. He becomes the ſon of the adopter, under the rule of VISHNU (CLXXXV), which is expounded in the *Retnácara*, "he is ſon of him to whom he is given by his father and mother." He claims the family of his adoptive father, under the text of MENU (CLXXXI).

"The funeral cake follows the family and eſtate:" thus, becauſe the family or eſtate departs, the funeral cake alſo departs; by ſaying the funeral cake is extinct, his continuance of the lineage is denied. Hence this phraſe, "the funeral cake follows the family and eſtate," does not ſignify, that, wherever the family or eſtate goes, the funeral cake alſo goes; for, were it ſo, a military man, or other perſon, taking the inheritance of a *prieſt*, who leaves no heir ſprung from the ſame primitive ſtock, nor a fellow ſtudent, nor any kinſman, would offer the funeral cake. Nor does it ſignify, that the funeral cake is followed by the family and eſtate; for, were it ſo, *the adopted ſon* would not take the inheritance, but the grandſon in the female line would claim the eſtate and family of his maternal grandfather, like a ſon. The *poſſible* miſconſtruction of the phraſe is thus obviated. The ſame muſt be alſo underſtood in regard to the ſon of a wife: thus, if he belong to her huſband alone, he ſhall not perform the obſequies of his natural father, ſince he does not ſhare his eſtate and family; but the ſon of two fathers ſhall perform the obſequies of both.

On this VÁCHESPATI BHATTÁCHARYA remarks, if the right

be

be dubious, and there be no other argument deducible from precept, it is thus ſuggeſted, that the funeral cake ſhall not be offered unleſs the party can claim either the family or the eſtate: in this inſtance it is queſtioned whether the natural or adoptive father have a right to the funeral cake which muſt be offered by the ſon given; *but* it appears, that he ſhall not offer the funeral cake for his natural father, becauſe he does not aſſume his family *name* nor *take* his eſtate. In a caſe where the right is not dubious, the funeral cake ſhall be offered by a daughter's ſon to his maternal grandfather, although he do not claim the eſtate and family; and if there be a poſitive ordinance, the funeral cake may be offered to a ſtranger without taking his inheritance. Hence, the aſſumption either of the family name or eſtate, is the ground of the claim; that failing, the ſon's right to offer a funeral cake to the natural parent fails: his participation in the family and eſtate of his adoptive father is a true ground of claim, ſince he may aſſert the right of offering a funeral cake *to this parent*. It follows, that the ſon given claims the family and eſtate of his adoptive father. The ſame remark is made by RAGHUNANDANA, in the *Udváha tatwa*: it appears that the ſon given ſhall claim the family and eſtate of his adoptive father alone, ſince he cannot aſſume the family name and eſtate of his natural parent, nor perform his obſequies, which are here ſignified by the terms "funeral cake" and "funeral oblation." RAGHUNANDANA explains the word *ſwadhá*, an oblation to be eaten by progenitors; thus, of him who has given away his ſon, that is, of the natural father, for this is the neareſt term, the funeral cake, or oblation to be eaten by a progenitor, is extinct: it follows of courſe, that the funeral cake ſhall be offered to the adoptive father.

## CCLXXVII.

*Brahme purána*:—Thoſe ſons who are *adopted either as* a ſon given, a ſon ſelf-given, a ſon made *by adoption*, a ſon bought, or a ſon rejected, muſt ever be maintained *with ſupplies of food and apparel*:

2. They

2. They claim *descent from* a different primitive stock, are separate in the oblation of funeral cakes, and propagate a distinct race; on the birth of a child, or on the death *of a kinsman,* they partake of uncleanness for three days *.

Even though the adopted son were a nephew, he partakes of uncleanness for three days *only;* for his original relation by the funeral cake, through his father and mother, being annulled by their gift, impurity for ten days is set aside; and uncleanness for three days arises from his connexion by the funeral cake in right of the adoption by the accepter: but when a son is born to him, the adoptive father, his brothers, or any other kinsmen, all become impure for ten days, by reason of the connexion by the funeral cake in right of birth. Consequently, when affinity by the funeral cake arises solely from the gift of the father or the like, the uncleanness lasts three days *only*. Such is the opinion of some lawyers. VÁCHESPATI BHATTÁCHÁRYA holds, that, when sons given and the rest, have children born, or *themselves* decease, the impurity of the adoptive father, and of his father and other kinsmen, last three nights.

VISHNU and other lawgivers declare, that a son given is debarred from inheritance by the son of a twice-married woman and the rest: but, according to MENU and the rest, he excludes them. VISHNU and other lawgivers consider him as inferior, because he has no natural connexion through his mother: MENU and the rest deem him superior, because he was lawfully begotten; and MENU likewise holds, that the son of the wife, on the supposition of his transcendent virtue, excludes a son given. But VRĬHASPATI declares the inferiority of the son of a wife (CCII). He assigns a higher rank to the son of the body, and to the son of an appointed daughter, because they are lawfully begotten, and are connected *with the father and grandfather* through their mothers (CCXV). Consequently these are highest *in estimation:* "other sons" (CCXV), *who shall only be maintained,* are sons given and the rest: the son selfgiven is included *in the same description*

* The first part of this verse has been cited at V. cclxxiv. On the subject of mourning, see MENU, Chap. V, v. LVIII, and following.

*ſcription* with the ſon made *by adoption*. "If pure by claſs" (CCII); this is intended to forbid the adoption of ſons inferior in claſs. "Irreproachable for their conduct;" this is intended to prevent the neglect of conſtant and occaſional acts of religion. Conſequently, the right of the ſon by a twice-married woman and the reſt, to the excluſion of the ſons given, bought, or the like, which is propounded by other Sages, alludes to ſons ſo adopted, but who are impure by claſs, and reproachable for their conduct. The text of the *Brahme purána* (CCLXXVII 1) relates to the ſame caſe.

Should not the ſon of a *Súdrá* wife be alſo contemned, for he is born of a woman unrighteouſly married (CXLV 2)? Still this ſon is not procreated by an adulterer: the marriage of his mother is alone unrighteous, not the procreation of the ſon; on the contrary, there would be ſin in not approaching a married *Súdrá* in due ſeaſon: the latter part of the text cited exhibits the period when the ſin of marriage, not of procreation, is mature. But the ſon born of an unmarried woman of the ſervile claſs, is *named in law* ſon by a *Súdrá*. He is mentioned by VASISHT'HA as ſixth in rank, that is, ſixth among the laſt ſix, or, in a word, twelfth.

A queſtion here occurs for diſcuſſion. Can a ſon given be heir to a kinſman, or not? On this point ſome lawyers affirm, that the right of the ſon given to inherit from a kinſman, which is mentioned by MENU and BAUDHÁYANA, and his ſuperior rank, as ordained by GÓTAMA, VRĬHASPATI, and the *Cálicá purána*, muſt be conſidered as relating to a ſon given, who is endowed with tranſcendent good qualities; for the expreſſions uſed in the text of VRĬHASPATI, "pure by claſs, and irreproachable for their conduct," denote tranſcendent good qualities: pure ſignifies 'abſolved from all guilt;' "by acts of religion, by alms, by ſtudy of ſcripture, and by ſacrifice, men become pure, *or are abſolved from all guilt*." A text of MENU ſhows, that a ſon given, being endowed with every virtue, ſhall take the heritage.

## CCLXXVIII.

MENU:—Of the man to whom a ſon has been given, adorned

adorned with every virtue, that ſon ſhall take the heritage, though brought from a different family.

In like manner, the ſucceſſion of a ſon given, notwithſtanding the claims of a ſon by a twice-married woman and the reſt, which is propounded by GÓTAMA, BAUDHÁYANA, and the *Cālicā purāna*, muſt be explained from the concurrent import of the texts of MENU and VRĬHASPATI. It is accordingly declared in the *Brahme purāna*, that ſons given and the reſt ſhall only be maintained (CCLXXVII); the omiſſion of the ſon of a pregnant bride, in this text, is founded on the conſideration of his affinity in right of birth. It ſhould not be alleged, that the text of the *Brahme purāna* relates to culpable ſons of theſe deſcriptions. It is declared, that, if culpable, even a ſon of the body does not take the heritage (CCLXIV): hence vicious ſons, whether begotten in lawful wedlock or the like, or adopted as ſons given and the reſt, are excluded from participation; ſons ſo adopted, being void of good qualities, ſhall have a maintenance: but ſuch ſons, being virtuous, ſhall take the inheritance of a father, or of his kinſman. This is right, ſay theſe lawyers. But others conteſt this opinion, *drawing other inferences* from the ſubjoined text cited in the commentary on YÁJNYAWALCYA.

## CCLXXIX.

VRĬHASPATI, after premiſing the *Cali* age: — Sons of many different ſorts, who were made by ancient Sages, cannot now be adopted by modern men, deſtitute of eminent powers.

Sons of many different ſorts, namely ſons of a wife and the reſt, who were made by ancient Sages, cannot now, in the *Cali* age, be adopted by modern men. Why? To this queſtion he replies by an epithet which contains the reaſon, " deſtitute of eminent powers." Conſequently eminent power, ariſing from true piety, is ſtated as requiſite to make him a ſon who is begotten on a *widow, or on a* married woman, *whoſe huſband is impo-*

*tent:* hence it appears, that ſuch a ſon ought alone to be conſidered as ſuperior in rank, for *the filiation of* whom devotion is not *particularly* required. But the filiation of a ſon given in adoption being admitted by the *'Aditya purána* in the *Cali* age, *eminent* devotion is not required for *the adoption of* ſuch a ſon, any more than for a ſon legally begotten. The ſon given, like the ſon begotten in lawful wedlock, is therefore ſuperior to the reſt.

## CCLXXX.

*'Aditya purána:*—The filiation of any but a ſon legally begotten, or given in adoption *by his parents, is a part of ancient law abrogated in the* Cali *age.*

"Virtue" in the text of MENU (CCLXXVIII) [illegible] 'abſence of vice;' and "pure by claſs and irreproachabl[illegible] their conduct," in the text of VRĬHASPATI (CCII), bears t[illegible] import, ſay theſe lawyers. That is inaccurate. Sons are of two ſorts, *by birth and by adoption;* the ſon lawfully begotten and the reſt, are ſix ſons properly ſo called; the ſon given and the reſt, are ſix ſons improperly ſo denominated: the chief of each ſet, the ſon lawfully begotten, and the ſon given in adoption, are approved in the *Cali* age. Accordingly VRĬHASPATI deſcribes the appointed daughter as ſuperior to the ſon given; *their relative* ſuperiority and inferiority depend not on piety. This, which is quoted as the opinion of ſome lawyers, is accurate. But in fact all ſons, whether born of a twice-married woman and the like, or given in adoption and ſo forth, are heirs to kinſmen, as well as to their own fathers; yet, if void of good qualities, they ſhall not take the heritage of a kinſman: however, they ſhall have the ſhares of the paternal eſtate allotted to them by the *Brahme purána* and other authorities, but ſome ſhall have a maintenance only; the due allotment ſhall be made, as deduced from the ſeveral preceding texts. It appears to be the preſent practice for a ſon given in adoption, who performs the acts preſcribed to his claſs, whether conſtant, occaſional, or voluntary, ſuch as ſacrifice, con-

ſecration

ſecration of pools, and ſo forth, to take the inheritance of his paternal uncles and the reſt. This we hold to be proper."

"Virtue" in the text of MENU (CCLXXVIII) is explained by CHANDÉSWARA and others, ſcience and good conduct: "irreproachable for their conduct," in the text of VRĬHASPATI (CCII), ſuggeſts one who is exact in the performance of every act of religion; "'pure by claſs'' excepts one who belongs to an inferior tribe. CHANDÉSWARA remarks, on the expreſſion "adorned with every virtue," that the right of ſucceſſion being ſuggeſted by filiation alone, "adorned with every virtue" is intended to ſhow, that he ſhall take a ſhare even though a ſon of the body be produced; but if void of virtue, the ſon given ſhall have a ſimple maintenance. It is alſo proper to affirm, as intended by that expreſſion, that ſons given and others, being vir[illegible] are entitled to the inheritance and ſo forth, in preference [illegible] by a twice-married woman or the like, if he be deſtitu[illegible]ood qualities; but if all be deſtitute of good qualities, [illegible] is ſuperior, as neareſt allied by birth, ſhall take a full ſhare of the paternal eſtate, and the reſt ſhall have the portions allotted to them in the *Brahme purána* and other works. The maintenance directed (CCLXXVII) muſt conſiſt in the receipt of ſuch a ſhare; elſe the *ſeeming* contradictions in the texts of MENU and others, and of YÁJNYAWALCYA and the reſt, could not be well reconciled. But ſome argue, from the concurrent import of the text of DÉVALA (CXC 4), that the text of the *Brahme purána* alſo relates to ſons given and the reſt, who are inferior in claſs *to their adoptive fathers*. This brief expoſition may ſuffice.

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## SECT. IX.—*On the Son Bought.*

He is eighth according to YÁJNYAWALCYA; for, immediately after deſcribing the ſeventh, or ſon given, he thus deſcribes the ſon bought: "he who is ſold by them *(by his father and mother)*, ſhall be conſidered as a ſon bought" (CCXXXVI).

 Although

Although a ſon given and a ſon bought equally become *the* property *of the adopter* by the voluntary act of the original owner, he conſiders the ſon bought as inferior to the ſon given, becauſe the ſin of ſelling offspring is greater. Many legiſlators concur in deeming him inferior. The rules reſpecting him are ſimilar to thoſe concerning the ſon given. " And the reſt," in the texts of the *Cálicá purána* (CLXXXII 2, and CLXXXIII), comprehend the ſon bought, and the reſt. VISHNU names him as ninth in rank (CLXXXV).

## CCLXXXI.

BAUDHÁYANA :—He is called a ſon bought, who is received, for the ſake of male iſſue, from the hands of his father and mother, or either of them, *after paying a price.*

" Or either of them," if he be received from the hands of his mother, the conſent of her huſband muſt be required in the form which has been mentioned in the preceding ſection. By the expreſſion of VASISHT'HA, " let not a woman give a ſon" (CCLXXIII), which has a ſecondary ſenſe without abandoning its primary ſignification, ſale and the like is definitely intended; for, by parity of reaſoning, there is occaſion for the aſſent of the huſband, ſince HÁRÍTA maintains, that a woman can claim no independence in the receipt or diſpoſal of wealth. This is taken from the *Retnácara.*

" After paying a price " muſt be ſupplied; for that correſponds with the text of YÁJNYAWALCYA, ſince the verb *crí*, joined to the prepoſition *vi*, ſignifies delivery preceded by payment of a price, and is *ſo* employed *in that text.*

## CCLXXXII.

MENU :—He is called a ſon bought, whom a man, for the ſake of having a ſon *to perform his obſequies*, purchaſes from his father and mother, whether the boy

boy be equal or unequal *to himſelf in good qualities; for in claſs all adopted ſons muſt be equal.*

"Unequal;" not of the ſame claſs. The *Párijáta.*

Neither ſhould a child of inferior, nor one of ſuperior claſs, be adopted as a ſon; the mention of "equal or unequal" muſt therefore relate to good qualities.

The Authors of the *Méd'hátit'hi* and *Pracáſa.*

CULLÚCABHATTA quotes the following text of YÁJNYAWALCYA:

## CCLXXXIII.

YÁJNYAWALCYA:—This law (that, on failure of the beſt, the next beſt ſhall offer the funeral cake, and poſſeſs the heritage) has been propounded by me in reſpect of ſons equal in claſs.

Thus, ſince the texts of both have the ſame purport, equal claſs is required in all caſes, excepting that of a ſon by a *'Súdrá.* In like manner equality of claſs is alſo aſſumed in the caſe of a ſon by a twice-married woman, and the reſt.

He is called a ſon bought, who, being ſold by his father and mother, is received for the ſake of male iſſue, even though he be unequal in claſs; for the text of MENU expreſſes, "whether the ſon be equal or unequal." The *Dípacalicá.*

For the commentator thinks, that, if equal, in the definition of a ſon given, as delivered by MENU (CCLXXV), ſignify "of the ſame claſs," it ought to ſignify the ſame in this place alſo; if there alſo it ſignify equal in good qualities, as it is expounded in the *Méd'hátit'hi*, that is not pertinent, when the good qualities of a child five years old muſt be examined. Were this *interpretation* admitted, would there not be an inconſiſtency with the text of YÁJNYAWALCYA (CCLXXXIII)? No; for that text may be expounded, "in reſpect of eleven ſons, omitting the ſon bought." But, in fact, a child of a lower claſs may truly become a ſon *by adoption;* for DÉVALA declares, that ſons of a lower tribe muſt live under him *of equal claſs* (CXC 4). The expreſſion of YÁJNYAWALCYA, "in reſpect of ſons equal in

in claſs," is intended to preſerve the order of ſucceſſion: for, if the ſon by a twice-married woman belong to an inferior tribe, and the ſon given be ſuperior to him, then the adopted ſon, *who is of ſuperior claſs*, ſhall alone take the inheritance; but if the ſon by a twice married-woman were equal in claſs, he would be the legal heir.

This ſon bought is ſon of the purchaſer, and participates in his family and eſtate. He is ſuperior to the ſon made *by adoption*, and the reſt. This ſhall be hereafter diſcuſſed. As for the text of YAMA (CXCI 4), which deſcribes the ſon bought as fifth, that is, as fifth among the laſt ſix, or the eleventh *of the twelve ſons*, that muſt be underſtood when he is inferior in good qualities to the ſon rejected, and the reſt. The text of VISHNU, which places him ninth (CLXXXV), muſt be alſo adduced when the ſon of a pregnant bride is *more* virtuous *than he*. According to the *Brahme purána*, the ſon bought ſhall have a tenth part *of ſuch ſhare as is allotted to the ſon of the body* (CCXVII 3).

## SECT. X.—*On the Son made by Adoption**.

He is ninth according to YÁJNYAWALCYA; for, immediately after deſcribing the eighth, or ſon bought, he deſcribes this ſon as one who is made by the adopter's own act (CCLXXXVI).

CCLXXXIV.

* Sons are thus adopted in *Mit'hilá*; the practice of adopting ſons given by their parents was there aboliſhed by SRI'DATTA and PRATIHASTA; although the latter had been himſelf adopted in that manner. Their motive was, leſt, a child already regiſtered in one family, being again regiſtered in another, a confuſion of families and names ſhould thence enſue. A ſon adopted, in the form ſo briefly noticed in the preſent ſection does not loſe his claim to his own family, nor aſſume the ſurname of his adoptive father: he merely performs obſequies, and takes the inheritance. In *Gaura*, on the contrary, and in moſt other countries, ſons are only adopted in the form diſcuſſed in the eighth ſection; but the *Góſwámís*, and other devotees, who lead a life of celibacy, buy children to adopt them in the mode which is briefly conſidered in the ninth ſection. The practice of appointing brothers to raiſe up male-iſſue to deceaſed, impotent, or even abſent huſbands, (ſee Sect. IV.) prevails in *O'riſa* (O'dra déſa). T.

## CCLXXXIV.

Baud'háyana:—He whom a man adopts, the boy being equal in claſs, and conſenting *to the adoption*, is a ſon made.

One who conſents; that is, one who thus acquieſces, "I will become his child; he ſhall take me as his *own* ſon."

The *Retnácara*.

He is inferior in rank to the ſon given, and to the ſon bought, becauſe he is not given away by his father and mother, to whom he belongs. In fact, the boy is bereft of father and mother, or is forſaken by them; or, both being living, they *tacitly* conſent to the adoption, as a man acquieſces in another's enjoyment of his land. Or this ſon is, *as it were*, made of *cúsa* graſs and the like, endued with life by the power of devotion. If he do not conſent to become ſon *of the adopter*, what ſhall be the conſequence? The boy does not become *his* ſon. Or, as Gangá conſented to become daughter of Jahnu, ſo, if any one accept the relation of ſon to another, and the other admit him as ſuch, then he becomes ſon of two fathers. His precedence above the ſon ſelf-given, and the reſt, ſuppoſes him endued with good qualities.

## CCLXXXV.

Menu:—He is conſidered as a ſon made, *or adopted*, whom a man takes as his own ſon, the boy being equal in claſs, endued with filial virtues, acquainted with *the* merit *of performing obſequies to his adopter*, and with *the* ſin *of omitting them*.

According to Cullúcabhatta, "equal," or ſimilar, here ſignifies equal in claſs. It is explained in the *Médhátit'hi*, endued with qualities ſuitable to the family. "Acquainted with merit and with ſin;" this is explained in the *Retnácara*, knowing the merit of performing obſequies to his father and mother, and the ſin of omitting them: "endued with filial virtues," that is, with the virtues of obedience and the like.

Being ſimilar to a ſon given, he ought to be adopted under the age of five years, as ordained in the *Cálicá purána* (CLXXXIII). Nearly the whole form directed for a ſon given ſhould be obſerved. It muſt be affirmed, that his future eminence in literature is conjectured from the ready apprehenſion and docility diſcovered by him at the age of five years. All this is *vague and* complimentary, for it is not requiſite to filiation.

This ſon claims the eſtate and family of his adopter; the text of the *Brahme purána* (CCXVII 2) allotting a fifth part to the ſon made, ſuppoſes him endued with tranſcendent virtue; and ſo do the texts of MENU and the reſt. This brief ſtatement may ſuffice.

## SECT. XI.—*On the Son Self-given.*

He is tenth according to YÁJNYAWALCYA; for, immediately after deſcribing the ninth, or ſon made, he proceeds to deſcribe the ſon ſelf-given.

### CCLXXXVI.

YÁJNYAWALCYA:—He who is ſold by them (by his father and mother), ſhall be conſidered as a ſon bought; a ſon made is adopted by the act of the adopter himſelf, but he who gives himſelf is a ſon ſelf-given; and one received, while yet a fœtus in the womb of his mother, is called the ſon of a pregnant bride.

VISHNU ſays, "the tenth is a ſon ſelf-given" (CLXXXV); to which it is added in the *Retnácara*, he is ſon of the man to whom he gives himſelf.

### CCLXXXVII.

MENU:—He who has loſt his parents, or been abandoned

doned by *them* without juſt cauſe, and offers himſelf to a man *as his ſon*, is called a ſon ſelf-given.

"Offers himſelf;" gives himſelf, ſaying "I am thy ſon."
The *Retnâcara.*

He who, having loſt his father and mother, or being forſaken by them without juſt cauſe of abandonment, gives himſelf to a man *as his ſon*, is called a ſon ſelf-given, and is conſidered by MENU and the reſt as ſon of that man. CULLÚCABHAṬṬA.

He is inferior to the ſon given, and to the ſon bought, becauſe he is only given by himſelf, having acquired a ſecondary power *over his own perſon*. The ſon made *by adoption*, ſay ſome lawyers, is diſtinguiſhed from this ſon, becauſe he only acquieſces in the adoption which is the act of another, and does not give himſelf. This ſon may, *however*, claim precedence above the ſon made. The *Brahme purâna* aſſigns a twelfth part to him.

## SECT. XII.—*On the Son of a Pregnant Bride.*

He is eleventh, according to YÁJNYAWALCYA; for, immediately after deſcribing the tenth, or ſon ſelf-given, he thus deſcribes this ſon; "and one received while yet a fœtus in the womb of his mother, is called the ſon of a pregnant bride" (CCLXXXVI); that is, one accepted while he remained in the womb *of his mother*: it is thus intimated, that he is ſon of him who marries her. VISHNU ſays, "the ſeventh is the ſon of a pregnant bride; and the male child of a woman eſpouſed while pregnant, is ſon of the man who marries her" (CLXXXV).

### CCLXXXVIII.

MENU:—If a pregnant young woman marry, whether her pregnancy be known or unknown, the male child in her womb belongs to the bridegroom, and is called a ſon received with his bride.

 The

The author of the *Pracáśa* remarks, that the ſolemn rite *of marriage* does not take place; for a text declares, that holy nuptial texts are applied ſolely to virgins (Book IV, v. CLXVIII); but this woman is not a virgin, ſince ſhe has had intercourſe with man. On this ſubject ancient authors obſerve, that in this place "marry" relates to the form of marriage directed in the *At'harvan véda*, which is ordained by ſcripture for women who are not virgins, and which is now practiſed by *'Súdras* of the loweſt rank, and by others. Since holy nuptial texts are confined to virgins, this term, "marry," intends the oblation to fire on the fourth day, and other rites celebrated without texts. Thus CHANDÉSWARA. But, in fact, ſince the text expreſſed only "received while yet a fœtus in the womb," acceptance alone is determinately meant: the requiſites *of this filiation* do not extend to the oblation to fire; elſe, were that oblation caſually omitted during pregnancy, the child would not be a ſon received with a bride, and might be ſuppoſed to become ſon of his maternal grandfather. But he is not ſon of his maternal grandfather; for, like ornaments and the like, the child was given away by him with his daughter. He is ſon of the bridegroom alone; not received *as ſuch* in right of birth, for he is not produced from the ſeed *of his legal father*, nor from a receptacle *appertaining to that father at the time of procreation;* but becomes his ſon mediately, in conſequence of acceptance, becauſe the mother, who is owner of the child, is transferred to the bridegroom by the maternal grandfather's gift.

Being deficient in good qualities, he is inferior to the ſon given, and the reſt. The offspring of an unmarried girl, conſidered as ſon of him who *ſubſequently* marries her, may be alſo deemed inferior to that ſon. If the natural father be known, the child belongs to him alone. The *Brahme purána* (CCXVII 3) allots a ninth part to the ſon of a pregnant bride. This brief expoſition *may ſuffice.*

## SECT. XIII.—*On the Son Rejected.*

He is twelfth, according to YÁJNYAWALCYA; for, immediately

ately after deſcribing the eleventh, or ſon of a pregnant bride, he thus deſcribes this ſon:

## CCLXXXIX.

YÁJNYAWALCYA:—He who, being forſaken *by his natural parents*, is received by another, ſhall be conſidered as a ſon rejected.

VISHNU (CLXXXV) ſays, "the eleventh is the ſon rejected;" being forſaken by his father and mother, he becomes the ſon of him by whom he is received. The text muſt be ſo ſupplied.

## CCXC.

VASISHT'HA:—The fifth is the ſon rejected, whom a man receives as his ſon, the boy having been forſaken by his father and mother.

The fifth rank is mentioned, as is obſerved in the *Retnăcara*, meaning the fifth among the laſt ſix; conſequently he is eleventh in rank.

## CCXCI.

MENU:—A boy whom a man receives as his own ſon, after he has been deſerted *without juſt cauſe* by his parents, or by either of them *if one be dead*, is called a ſon rejected.

"Deſerted;" abandoned. The deſertion may be cauſed by utter inability to ſupport the child, or by ſome defect *in* him; he muſt be received as a ſon, not *merely* received from a willingneſs to maintain the child. The *Retnăcara*.

The child is deſerted with *ſome* ſuch thoughts as theſe: "he is thrown away like the chaff of corn; any man may take him or not as he pleaſes; I have no occaſion for this child."

The ſon ſelf-given is ſuperior, becauſe he is given by a ſecondary owner, namely himſelf; but this ſon is inferior, becauſe he

was

was similar to a waif, not being then recognized as ſon of any man; for, in this world, the finding of a waif is conſidered as a leſs perfect title than a gift. But in the caſe of a ſon made, the child being adopted by another, although the father and mother were living, their right is forfeited by neglect, like the right of a man to a chattel adverſely enjoyed by another. As in the caſe of land, that neglect is an act of will, which may be expreſſed in theſe words, "this land is poſſeſſed by another; let him enjoy it, and let it become his abſolute property;" ſo in the caſe of a ſon, the act of the will may be thus expreſſed, "this man adopts him for his ſon; let him do ſo, and let the child become his ſon." Conſequently, the principal owner tacitly conſenting, the ſon made *by adoption* is therefore ſuperior to one ſelf-given, and to him who is rejected *by his natural parents*: in the caſe of a ſon rejected, the owner aſſents to the loſs of his own right, but not to the ſubſtituted right of another; in the caſe of a ſon made, *he* alſo *aſſents* to the ſubſtituted right of another. Were it ſo, what difference would there be between a ſon given and a ſon made, ſince the owner equally aſſents in both inſtances to the loſs of his own right, and to the ſubſtituted right of another? Neglect is the foundation of the *ſubſtituted right to a* ſon made, but gift *is the foundation* of *ſuch right to* a ſon given: the difference between them is this; donation is an act of the will contemplating the transfer of property to another, and which may be thus expreſſed, "let this become his property;" neglect is an act of the will contemplating property ariſing from occupancy, and which may be thus expreſſed, "let this, which is occupied by him, be loſt to me, and become his by occupancy." The neglect may be of a different nature, ſolely contemplating the loſs of right, and which may be thus expreſſed, "let my right be forfeited:" this is the foundation of the *ſubſtituted right to a* ſon rejected. In the former inſtance of neglect, property veſts in the actual occupant *alone*; in the laſt inſtance, it *ſubſequently* veſts in any occupant whomſoever.

The *Brahme purána* (CCXVII 2) allots a ſeventh part to the ſon rejected. This brief expoſition may ſuffice.

SECT. XIV.

## Sect. XIV.—*On the Son by a 'Súdrá.*

He is not particularly noticed by Yájnyawalcya. Since "any-how" in the text of Vishnu ("the twelfth is a ſon any-how produced," v. CLXXXV), is expounded in the *Retnácara* 'by a *'Súdrá* woman married or unmarried,' the ſon of a *'Súdra* wife is alſo conſidered as thirteenth in rank. His ſhare of the inheritance has *indeed* been propounded by Yájnyawalcya (CXLII). The concurrent import of the texts of Menu and Vasisht'ha is the foundation on which the term "any-how produced" is reſtricted to the ſon procreated on a *'Súdrá* woman.

The text cited in a former chapter (CLXXVII) is inſerted by Menu in the place where ſons of twelve ſorts are defined, immediately after deſcribing eleven ſons. *Páraśava* (a living corpſe) is a name for the ſon of a *Bráhmana* by a *'Súdrá* woman. It is thus explained in the *Retnácara;* "though fulfilling *his duty*" *(párayan)*, that is conferring ſome benefit on his ſuppoſed father, "he is even as a corpſe," becauſe the benefit is inconſiderable. The word *párayan* may alſo ſignify "living."

### CCXCII.

Vasisht'ha:—The ſixth is the ſon by a *'Súdrá.*

Sixth here relates to the laſt ſix. The *Retnácara.*

### CCXCIII.

Baudháyana:—A ſon begotten through luſt on a *'Súdrá* woman by the chief of twice-born men, is called a living corpſe *(páraśava).*

The ſhare of a ſon by a married *'Súdrá* had been propounded by Menu, Yájnyawalcya, and others. Menu (CLXXVII), and Vishnu (CLXXXV), now ſpeak of a ſon by an unmarried *'Súdrá.* Accordingly Menu, immediately *after this text* (CLXXVII),

(CLXXVII)*, notices the participation of a ſon begotten by a man of the ſervile claſs on his female ſlave (CLXXVI); "man of the prieſtly claſs" in this text ſignifies a *Bráhmana*, *Cſhatriya*, or *Vais'ya*. But Yájnyawalcya has not allotted any ſhare to the ſon of a twice-born man by a female ſlave. The ſhare of ſuch a ſon, who is *conſequently* of a different claſs from his father, and far inferior in rank to other ſons (CCLXXXIII), muſt be deduced from the texts of other Sages. The law is thus explained; and we hold this reaſonable: Jímútaváhana alſo concedes *to this opinion*.

## Sect. XV.—*On the Adoption of Sons.*

### CCXCIV.

*Smrĭti*, cited in the *Retnácara*:—Sons by women of the ſervile claſs, though they be *Súdras* and ſlaves, are in ſome inſtances *deemed the legal ſons* of prieſts; and ſo they are of kings conſumed by curſes, and ever doomed to periſh:

2. And ſometimes they are *conſidered as the legal iſſue* of men who ſeek wealth, or practiſe warfare.

The ſuppoſed impoſſibility *of their becoming legal ſons* of theſe men is denied. The *Retnácara*.

Hence, if a man be deſtitute of other offspring, his child by a woman of the ſervile claſs muſt be acknowledged as his ſon.

### CCXCV.

If there be a ſon of the body, or a ſon of an appointed daughter;

2. The ſon of a wife and the reſt, of eleven ſons, muſt

* Menu, Chap. ix. V. 178 and 179.

muſt be conſidered as belonging to diſtinct families, and as perpetuating a ſeparate race.

3. All ſuch ſons ſhall ever perform obſequies and other rites for thoſe fathers, like ſlaves, *or like men of the ſervile claſs.*

If there be a ſon of the body, or if there be a ſon of an appointed daughter, then the ſon of a wife and the reſt merely propagate a family; ſuch is the conſtruction. "Like ſlaves," in the form which ſhould be practiſed by a ſlave, *or by a man of the ſervile claſs.* The *Retnácara.*

## CCXCVI.

A ſon of concealed birth, the ſon of an unmarried woman, the ſon received with a bride, the ſon by a *'Súdrá,*

2. And the ſon by a twice-married woman, are five who are ſhunned by men of the commercial claſs, through apprehenſion of a fine *to be paid* to the king; all the reſt are likewiſe heirs *of twice-born men.*

It is thus declared poſſible that men of the commercial claſs may have ſons conſidered as ſuch in a ſecondary point of view. The *Retnácara.*

"Likewiſe" alludes to the ſons improperly ſo called. It is thus declared poſſible, as is obſerved in the *Retnácara,* that a ſubſidiary ſon may be adopted by a prieſt, a ſoldier, or a merchant.

## CCXCVII.

Men of the ſervile claſs, acting as ſlaves, living on food ſupplied by another, and ſubject in their perſons to the dominion of a maſter, can in no inſtance have a ſon.

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2. The male child who is begotten by ſuch a ſlave, becomes himſelf a ſlave.

It is a notion intimated in the *Retnácara*, that ſince the text of MENU (Book III, v. LII) muſt be conſidered as declaratory of the ſubjection of a ſlave to the will of his maſter, he is ſubject to his controul even in the adoption of a ſon, and that the child is in like manner ſubject to the dominion of his maſter.

## CCXCVIII.

MENU:—On failure of the beſt, *and* of the *next* beſt *among thoſe twelve ſons*, let the inferior in order take the heritage; but if there be many of equal rank, let all be ſharers of the eſtate.

Among the ſons above-mentioned, *namely*, the ſon of a wife and the reſt, *all* being virtuous, *let the beſt take the heritage;* on failure of virtuous children, a worſe ſon, deficient in good qualities, is entitled to the ſucceſſion. But if there be many of various deſcriptions, ſuch as the ſon of a wife and the reſt, who are *all* endued with equal good qualities, they are all equal ſharers of the eſtate.

"Similar" is explained in the *Retnácara*, equal in good qualities, or in uneſſential properties. The *author's* notion *of the purport of the text* is the ſame. Conſequently, MENU intends that the rule of ſucceſſion to heritage and the like ſhould be drawn from the different degrees of virtue, without attending to the difference of the form in which a ſon is adopted. This is alſo the opinion of other legiſlators; but they have deſcribed a particular order, on the ſuppoſition of proportionate good qualities. Thus ſome explain the text. *According to others*, "on failure of the beſt, and of the next beſt," that is, of the firſt mentioned reſpectively, the inferior in order, or next mentioned, ſucceed *to the heritage*. Thus YAJNYAWALCYA directs, that, "on failure of thoſe firſt mentioned, the next in order ſhall give the funeral cake, and claim the heritage" (CLXXXIX).

CCXCIX.

## CCXCIX.

VISHNU :—Among theſe the firſt in order is preferable ; he alone ſhall take the heritage, and ſhall ſupport the reſt.

## CCC.

NÁREDA :—The firſt in order are ſeverally conſidered as eldeſt or ſuperior, the laſt are reſpectively deemed inferior ; on the death of the father, they ſucceed in order to his eſtate.

2. On failure of the firſt, and next in rank, he who is inferior *in the next degree* ſhall take the inheritance.

CULLÚCABHATTA alſo ſays the ſame : he thus expounds the laſt half of the text of MENU (CCXCVIII) ; ' if there be many ' ſons of the ſame deſcription, ſuch as ſons by a twice-married ' woman or the like, they ſhall all take and divide the heritage.' He explains ſimilar, " equal in rank," being ſons of a twice-married woman or the like. In the gloſs of the *Retnácara*, the term " uneſſential properties," alludes, ſay theſe other lawyers, to the rank as ſons by a twice-married woman or the like. According to this opinion, the ſon of the wife and the reſt are never equal to the ſon of the body. That opinion only is accurate. Accordingly the *Brahme purána* aſſigns the whole eſtate to the ſon of the body though laſt born (CCXVII) ; that is, if partition be made by a father, he ſhall give to his ſon born in lawful wedlock the full ſhare directed under that head : he ſhall give the third part of ſuch a ſhare to the ſon of the wife, and reſerve for himſelf as much as he pleaſes, or a double ſhare, (for there is a difference of opinion on that point) : in like manner, he ſhall give the fourth part of a ſhare to the ſon of an appointed daughter, and their due allotments to the reſt. If there be many ſons, namely, a ſon of the wife, a ſon of the body, an appointed daughter, and ſo forth, let him ſo diſtribute the eſtate that the ſon of

the body may have twice as much as the ſon of the wife, thrice as much as the appointed daughter, and ſo forth; and *the father* himſelf have twice as much as his ſon begotten in lawful wedlock. The natural diſtribution has been propounded by YÁJNYAWALCYA and others. The form *of partition*, expreſsly mentioned in the diſcuſſion on ſons of twelve deſcriptions, muſt be obſerved: but if there be a difference of good and bad qualities, the form of diſtribution directed in the *Brahme purána* and the reſt muſt be adopted.

It is recorded in *Puránas* and other works, that a king, having purchaſed a boy named 'SUNAHSÉP'HA, who was ſold by his father, attempted to ſacrifice him to the divinity; but the boy, being ſaved from death by divine interpoſition, became ſon of the ſage VISWÁMITRA: in what form did 'SUNAHSÉP'HA become his ſon; for he was not a ſon given, ſince the boy was not beſtowed by his father on VISWÁMITRA? He was a ſon ſelf-given; for, a boy having given himſelf as a ſon, when the right of his father and mother was annulled by their leaving him to die, or by any other means, the definition of a ſon ſelf-given is applicable to him. This brief explanation may ſuffice: to expatiate would be vain.

Among the twelve deſcriptions of ſons begotten in lawful wedlock and the reſt, any others but the ſon of the body and the ſon given are forbidden in the *Cali* age. Thus the '*Aditya purána*, premiſing "the filiation of any but a ſon lawfully begotten or given in adoption *by his parents*" (CCLXXX), proceeds: "Theſe *parts of ancient law* were abrogated by wiſe legiſlators, as the caſes aroſe at the beginning of the *Cali* age, with an intent of ſecuring mankind from evil; *that is, with an intent of* preventing the guilt of mankind; the term bears the ſenſe of prevention, as in the phraſe "ſmoke made as a precaution againſt gnats;" for that is one of the ſenſes aſcribed to this term in the dictionary of AMERA. The meaning therefore is, mankind would be culpable if the practice of raiſing up a ſon on the wife of a kinſman and ſo forth were *now* followed. So VÁCHESPÁTI BHATTÁCHÁRYA expounds the phraſe: but others explain the terms 'for the ſake of preſerving mankind;' the word uſed ſignifies 'intend,' as in the phraſe "wood intended for a poſt to be erected as a memorial of a ſacrifice performed." Conſequently the meaning is this; mankind would periſh if the practice of raiſing up a ſon

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on the wife of a kinſman and ſo forth were *now* followed. Formerly, men proceeded, without amorous dalliance, *to procreate iſſue* on a brother's wife, (who is ſimilar to a mother or a daughter in law,) with the ſole view of raiſing up offſpring to a brother: now, men being governed by luſt and grovelling appetites, and their paſſions being excited by ſimply looking on the face of a woman in private, they would repeatedly approach *a brother's widow* under pretence of raiſing up iſſue to him; mankind would be thus culpable, and periſh through the prevalence of ſin. In like manner ſufficient reaſons may be aſſigned for the prohibition of appointing a daughter and ſo forth. Again, by the term "powers" in the text of VRĬHASPATI (CCLXXIX) is meant, not only devotion, but the conſequence of it, namely command over the ſenſes.

Among theſe twelve deſcriptions of ſons, we muſt *only* now admit the rules concerning a ſon given in adoption and one legally begotten. The law concerning the reſt has been inſerted, to complete that part of the Book; as well as for the uſe of thoſe who, not having ſeen ſuch *prohibitory* texts, admit the filiation of other ſons. Thus, in the country of *'O'dra* ('O'riſa), it is ſtill the practice with ſome people to raiſe up iſſue on the wife of a brother.

## CCCI.

MENU:—Theſe eleven ſons (the ſon of the wife and the reſt as enumerated) are allowed by wiſe legiſlators to be ſubſtitutes *in order* for ſons of the body, for the ſake of preventing a failure of obſequies.

Hence a ſon given and the like ſhould only be adopted on the poſſibility of a failure of obſequies, not if they can be *otherwiſe* performed. If one who has a ſon legally begotten, adopt a ſon given, is the adoption valid or not? and what occaſion is there for its validity, ſince the obſequies muſt be performed by the ſon legally begotten? There is occaſion, for the purpoſe of removing the doubt whether the obſequies ſhall be performed by the ſon given if the ſon of the body afterwards die. To this ſome reply, that ſons given and the reſt being deſcribed as ſubſtitutes, and ſubſti-

tution being only admitted on the failure of the principal, the adoption of the ſon given is void, becauſe there was not at that time a failure of the principal; and if the ſon of the body afterwards die, the obſequies ſhall be performed by the wife, or by a collateral heir. That is wrong; for the ſon given, not the adoption of him, is deſcribed as a ſubſtitute: there is no difficulty in ſaying that, on failure of the principal, or ſon legally begotten, the ſon given ſhall act as ſuch. Accordingly SRÍD'HARA SWÁMÍ, in his gloſs on a verſe of the *Bhágavata* (CCXVI), quotes a text of law on the benefit ariſing from a multitude of ſons, to explain the motive for deſiring many children, when a ſubſidiary ſon *is adopted* even though a principal one be living: "Many ſons are to be deſired, that ſome one of them may travel to *Gayá*."

The adoption of a ſon given, although a ſon of the body be living, being thus valid, he ſhall have a third part as his ſhare, in the ſame manner with a ſon given, ſubſequently to whoſe adoption a ſon of the body was born (CXC). "Heirs" (CXC 3); that is, entitled to a full ſhare. "Shall have as their ſhare one third of the property" (CXC 4); that is, they ſhall have as a ſhare one third part of that which is receivable by the ſon legally begotten. What ſhall be the ſhare? Shall the ſon given receive four or three *ſuvernas* out of twelve which compoſe the ſhare received by the ſon of the body? or ſhall the ſon of the body receive twice as much as is received by the ſon given? To this it is anſwered, if it be the meaning of the law that he ſhall take one third part out of the ſhare which is received by the ſon legally begotten, then what would be the conſequence if there be many ſuch? the ſon given would receive an exceſſive ſum if he took a third part from each. Nor ſhall he take one ſhare out of the collected wealth; for, though ſingle, he would not receive a *full* third part, and the legitimate ſons would have more *than their due allotments*. Neither is the ſecond ſuppoſition right; for, were it ſo, he would take a quarter *inſtead of a third*. Thus the laſt ſuppoſition muſt be admitted. It may be illuſtrated in this manner: in the caſe of partition made by a father, according to the opinion of JÍMÚTAVÁHANA and the reſt, let two ſons legally begotten take eight *ſuvernas* each out of thirty-ſix inherited from a paternal grandfather, let the father take ſixteen *ſuvernas*, and the ſon given four.

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The meaning of the text is, that an adopted ſon ſhall have a third part of the ſhare appertaining to a ſon legally begotten. Some hold, that, in a partition of hereditary property made by a father, who has one ſon given and two ſons begotten in lawful wedlock, the whole eſtate ſhall be divided into thirteen parts, of which ſix belong to the father, three to each of the two ſons legally begotten, and one to the ſon given: *according to theſe lawyers*, the meaning of the text is, that an adopted ſon ſhall have a third part of ſuch a ſhare as is receivable by a ſon begotten in lawful wedlock. That is wrong; for it is not deduced, from the phraſe "ſhall have as their ſhare one third part," that they ſhall have a ſhare equal to one third part *of what is received by the ſon legally begotten*. As for the expoſition, that an adopted ſon ſhall take one third part of ſuch a ſhare as is receivable by this ſon in right of his legitimacy; that is wrong, for there would be none to take the remaining two thirds. If the remaining two thirds were again divided, nothing would prevent a ſecond remainder of two thirds; and that cannot be the ſenſe of the text.

Lawyers juſtify the text of the *Brahme purána* (CCLXXVII), as relating to the ſame ſubject with the phraſe "thoſe of a lower claſs muſt live under him, with a proviſion of clothes and food only" (CXC 4). That is wrong; for, were it ſo, the particular mention of ſons given and ſo forth would not be pertinent. Conſequently that text relates to a ſon given and others deficient in virtue, and it ſhows, that if any one of ſix ſons, namely the ſon of the body and the reſt, exiſt, he has a right to take a full ſhare and to perform obſequies, and the ſon given or other adopted ſon ſhall have a third part for his maintenance.

Since the text of MENU (CCLXXI) muſt relate ſolely to the ſon given, or other child adopted while a ſon legally begotten exiſts, for it is of courſe declared by the text of DÉVALA, that an adopted ſon ſhall have a third part if a ſon of the body be afterwards produced, does it not follow, that the adoption of a ſon given, being made by one who has a ſon legally begotten, is invalid? CULLÚCABHATTA has alſo remarked, that a ſon of the wife and the reſt ought not to be obtained if there be a ſon of the body or an appointed daughter: does not this text relate to the ſame ſubject? It ſhould not be argued, that, like the rule, "common property may not be given away by any one parcener,

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and wealth neceſſary for the ſupport of the family may not be aliened *even by a ſingle owner*," this text is intended to forbid ſuch adoption by one who has a ſon, not to declare the adoption void. Since it is demonſtrably right to eſtabliſh a moral offence in depriving the family of ſupport, ſin, not the invalidity of the gift, is thence deduced; but the text of MENU contains nothing prohibitory againſt ſuch an adoption: for, ſons given and the reſt, who are produced from the manhood of others, that is, others than their *adoptive* father, and from the wife of another, (for the expreſſion is merely illuſtrative;) theſe ſons, it is ſaid, being produced from another origin than the adoptive father's own ſeed and field, are *in truth* ſons of him from whoſe manhood and wife they ſprang, not ſons of the adopter: it follows, therefore, that the adoption is void.

If this be alleged, the anſwer is, ſtill the ſenſe of the text would be irrelevant: why ſhould not property ariſe in a ſon given, to one who has male iſſue, as well as in land given to him? and if property do ariſe, why ſhould he not be a ſon capable of inheriting the eſtate and performing obſequies? It makes no difference whether the ſon of the body be born before or after the adoption. Sacred ſtory records, that MENU appointed his daughter to raiſe up a ſon, although he had male iſſue. It ſhould not be argued, that ſhe merely propagated the family. Filiation being valid if ſhe perpetuate the race, nothing can bar the right of ſucceſſion veſted by divine power. Accordingly it is obſerved in the *Retnácara*, on the laſt part of the text above cited, "they belong in truth to the father from whoſe manhood they ſeverally ſprang, and to no other" (CCLXXI), that their claim as principals being denied, their claim as ſubſtitutes is hinted; "they are principal ſons of no other:" the text muſt be ſo ſupplied. It ſhould not be objected that the preceding text (CCCI) contains a vain repetition. It completes the ſenſe. What then is the claim of one who is a ſubſtitute for a ſon? It conſiſts in the right of performing the offices incumbent on a ſon, if there be no principal one. Admitting this inference from the opinion delivered in the *Retnácara*, ſtill adoption is prohibited according to the opinion of CULLÚCABHATTA, who holds that this ought not to be followed as a practice which is juſtified. It ſhould not be argued, that by ſo acting a moral offence would be committed. There is no argument on which

which a moral conſequence can be eſtabliſhed when a temporal effect may enſue. But here the intention of the precept is to forbid adoption then only when there is no motive for it; for the benefit deſired, namely deliverance from the hell called *put*, is obtained without adopting a ſon given, and through him, therefore, that purpoſe is not effected: but one who deſires numerous iſſue for other purpoſes beſides deliverance from the hell called *put*, may adopt a ſon given and the reſt, although he have one legally begotten. SRÍD'HARA SWÁMÍ and others have ſaid as much. The *Retnácara* and *Párijáta* expreſſing, that a ſon given and the reſt ſhould not be adopted if there be a brother's ſon, it muſt be underſtood that the prohibition concerns one who merely deſires male iſſue for the ſake of deliverance from the hell called *put*. This juſtifies the fact recorded in the *Bhárata* and other works, that PÁNDU, having other male iſſue, accepted of BHÍMA, ARJUNA, and other ſons of his wife; and he did ſo although he had nephews. It ſhould not be objected, that brother's ſon poſitively intends the ſon of an uterine brother only; and "brothers of the whole blood," in the text of MENU (CCLXXVI), ſignifies brothers by both the ſame parents. The dual number is not ſuppoſed in an appoſition of this form, unleſs there be ſpecial grounds of implication. It ſhould not be argued, that the proceeding of PANDU, who was acquainted with the legal prohibition, is a ground of ſuch implication. His conduct is declared to have been influenced by the deſire of having a ſon endued with ſtrength, and one ſkilled in juriſprudence and philoſophy. VÁCHESPATI BHATTÁCHÁRYA alſo admits the adoption of a ſon given, although there be a brother's ſon. CULLÚCABHATTA, however, expounds "brothers of the whole blood," brothers by the ſame father and mother. MENU and VISHNU declare, that a ſon delivers his father from the hell called *put*.

## CCCII.

MENU and VISHNU:—Since the ſon (*tráyaté*) delivers his father from hell named *put*, he was therefore called *puttra* by BRAHMÁ himſelf.

CCCIII.

Háríta:—A certain hell is called *put*; and, he who is deſtitute of male iſſue is there tormented: a ſon is therefore called *puttra*, becauſe he delivers his father from that region of horror.

CCCIV.

Vrĭhaspati:—Becauſe a ſon delivers his father from the hell called *put*, even by the ſight of his countenance, therefore is a man ſolicitous for the birth of a ſon.

2. A ſon's ſon, and the ſon of an appointed daughter, both contribute to the attainment of heavenly bliſs: both are equally pronounced fit for inheritance, and oblations of funeral cakes.

CCCV.

Menu and Vasisht'ha:—On him he devolves the burden of debt, by him he procures immortality, through him he joyfully becomes exonerated from every debt to living progenitors.

CCCVI.

Sanc'ha and Lic'hita, and Pait'hínasi:—By a ſon, however produced, a father proſpers; through his oblation of funeral cakes, he becomes exonerated from debt to his progenitors.

CCCVII.

Háríta:—He who has a ſon pure, capable and virtuous

tuous in the firſt period of life, and perfected by the correction of his own defects, tranſports his anceſtors over the abyſs *of death*.

## CCCVIII.

SANC'HA and LIC'HITA:—The perpetual ſupport of a conſecrated fire and the like, the ſcriptures and ſacrifices rewarded with ample gratuities, do not procure the ſixteenth part of the benefit ariſing from the birth of an eldeſt ſon.

2. Heaven is attained through the means of him who is celebrated as the ſire of a ſon and of a grandſon, and whoſe many children and himſelf, while living, had completed the *ſtudy of* ſcripture, and *the performance of* ſacrifice.

With whom ſcripture and ſacrifice is not incomplete; whoſe ſtudy of the *Véda* and performance of ſacrifice fail not: and that if he have many ſons: ſuch is the conſtruction. It conſequently appears to be a benefit ariſing from numerous iſſue, that many ſons, and the father himſelf, fail not in the ſtudy of ſcripture and performance of ſacrifice. "Many ſons are to be deſired, that ſome one of them may travel to *Gayá*." Hence ſons of various deſcriptions may be adopted by one who deſires numerous offſpring.

## CCCIX.

SANC'HA and LIC'HITA, VISHNU and HARÍTA:—By a ſon a man obtains victory over all people; by a ſon's ſon he enjoys immortality; and, afterwards, by the ſon of that grandſon, he reaches the ſolar abode*.

 CCCX.

* MENU, Chap. ix. V. 137, cited at V. 17.

## CCCX.

Yájnyáwalcya:—Through a ſon, a ſon's ſon, and the ſon of a grandſon, the father or anceſtor obtains *bliſs in other* worlds, immortality, and heaven; but the double ſet of oblations and the funeral cake are offered by a man's own ſon and other deſcendants, whether principal or ſubſidiary*.

Heaven ſignifies the ſolar abode; for the import is the ſame with that of the preceding text.

## CCCXI.

Vasisht'ha:—The endleſs abodes are allotted to thoſe who leave male iſſue; it is recorded, that "heaven is not for him who leaves no male progeny." Enemies therefore pronounce *this curſe*, "May they be childleſs, and become evil ſpirits!" The want of male iſſue is the great cauſe of deſtruction; therefore is a ſon deſired.

It is declared in the *Véda*, that heaven is not for him who leaves no male iſſue. It conſequently appears that celeſtial bliſs is attained through a ſon; and that is made evident by the text of Yájnyawalcya. "The endleſs abodes, &c." ſince the purport is the ſame, they are allotted to thoſe who have grandſons; the word "ſon" here ſignifies offspring in general. It is thus declared that ſons and other male deſcendants are moſt deſirable. The Sage proceeds to ſhow eternity *enjoyed* through the means of a ſon: childleſs men become inviſible giants or demons; certainly that is a great evil by which the name of giant or demon is *affixed to manes*: ſuch is the implied ſenſe according to the *Retnácara*. "Enemies, &c." this curſe is pronounced by them.

CCCXII.

* The firſt hemiſtich has been cited at V. 104.

## CCCXII.

*Smrĭti*, quoted in the *Retnácara*:—A ſon of any deſcription ſhould be anxiouſly adopted by one who has no male iſſue, for the ſake of the funeral cake, water, and ſolemn rites, and for the celebrity of his name.

2. Fathers deſire ſons, dreading leſt they fall to a region of horror, *and reflecting*, whoſoever *among theſe ſons* ſhall go *as a pilgrim* to *Gayá*, will convey us *beyond thoſe places of torture*.

It follows, that all manes are carried beyond the regions of horror, in conſequence only of obſequies performed at *Gayâ*.

## CCCXIII.

"A ſon will conſecrate a bull *at my funeral*, will perform obſequies at *Gayá*, will make ſacrifices, and conſecrate pools; he will defend me in old age, and will daily offer the *ſráddʼha* after my deceaſe."

In the former text a pilgrimage to *Gayâ* was alone mentioned; in this text obſequies are alſo ſpecified; there is not conſequently any vain repetition. "Daily;" every day, that is, every new moon. This alludes to the day of the patriarchs: a month of mortals, ſays Amera, is a day and a night of the patriarchs. Or it may allude to obſequies conſtantly *or daily* performed.

# CHAP. V.

ON

# EXCLUSION

## FROM PARTICIPATION.

### Sect. I.—*On Exclusion from Inheritance.*

CCCXIV.

As a man would be drowned who attempted to paſs deep water in a boat made of woven reeds, ſo does a father ſink in the gloom of death, who leaves only contemptible ſons.

Conſequently, he who is averſe from performing conſtant and occaſional rites, does not benefit his father: hence he is not capable of inheriting the paternal eſtate.

CCCXV.

Apastamba:—No doubt, all the ſons who are virtuous take their ſhares; but him who illegally acquires wealth, even though he be the firſt born, let the king declare incapable of inheriting.

Who, though firſt born, illegally diſſipates* wealth; ſuch is the conſtruction and ſenſe: "illegally," by gaming or the like: "incapable

* The ſame term is variouſly explained by the ſeveral commentators. I retain Sir William Jones's verſion of the text. T.

"incapable of inheriting;" capable of inheriting no more than the refidue of a fhare, after deducting fo much as has been diffipated by him. Some thus expound the text. The *Retnácara*.

Confequently, fo much fhall be deducted out of his fhare as has been expended with no view to the fupport of the family, to religious duties, and the like: but if more than the amount of his own fhare have been expended, the law does not direct that the excefs fhall be confidered as a debt; it is fit that he fhould only be deprived of his fhare.

A puerile author reverfes the reading; but to him who acquires wealth by legal means, "an equal fhare with his father fhall be allotted." That reading, fays Jímútaváhana, is not traditional.

Others explain the term *(pratipádayati)*, "acquires," or earns. Confequently, he who follows an illegal mode of fubfiftence, through avidity for wealth, without the fanction of the law, fhall be deprived of his fhare. "Following an irregular profeffion," in the text of Gótama, fignifies fubfifting by unlawful means.

## CCCXVI.

Gótama:—Though fon of a woman equal in clafs, he who follows an irregular profeffion, does not take a fhare *of the inheritance*, according to fome *lawgivers*.

## CCCXVII.

Menu:—All thofe brothers who are addicted to any vice, lofe their title to the inheritance.

"Any vice;" any forbidden acts, fuch as flaughter or the like, and reprehenfible means of fubfiftence, (Book II, Chap. iv. V. 20 and 27.) The virtual fenfe of the text (Book II, Chap. iv. V. xxvii 2), fay thefe lawyers, is, that ufury, agriculture, and commerce, are honeft profeffions for a *Vaiśya*; but, followed by a *Bráhmana* or a *Cshatriya*, partake of the quality of paffion.

Of thefe two the preferable opinion may be determined by the *regular*

*regular* ſenſe of the word *pratipádayati.* According to the beſt authors, the verb *pad*, preceded by *prati*, and augmented by the ſuffix *nyi*, is employed in the ſenſe of "give;" preceded by *ut*, it is uſed as ſignifying to generate or produce. By the word "though," in the text of GÓTAMA, it is intimated, "much leſs ſhall the ſon of a woman unequal in claſs *take a ſhare, if he follow an irregular profeſſion*:" "ſhare" muſt be ſupplied in the text.

By the expreſſion "even though he be the firſt born," the middlemoſt and the reſt are included in the text of 'APASTAMBA: an alternative, ſays the author of the *Pracáśa*, is deduced from a reference to the caſe of one who is able to avoid illegal practices. Conſequently the expreſſion "according to ſome" denotes a contingency: and that contingency is thus ſettled: he who can avoid irregular means of ſubſiſtence, ſhall take a ſhare; but if he do not avoid them, he ſhall not participate. GOVÍCHANDRA alſo affirms, that the expreſſion "according to ſome" denotes a double contingency, not a difference of opinion.

CULLÚCABHATTA expounds "addicted to any vice," (CCCXVII), devoted to gaming or the like. Others explain it 'inclined to diſſipate the wealth of the family.' JÍMÚTAVÁHANA interprets it 'averſe from performing their father's obſequies, and other acts of religion.' According to the opinion inſerted in the *Retnácara*, as maintained by ſome lawyers, the precept for depriving a gameſter or other vicious perſon of his ſhare, muſt be underſtood as ſignifying the allotment of a ſhare diminiſhed by ſo much as has been diſſipated. According to other commentators, men addicted to gaming, or the like, are not deprived of their ſhares, but men who follow an illegal profeſſion. Such is the difference between theſe two opinions: but it muſt be noticed, that many authors acknowledge the excluſion of a man addicted to gaming and ſimilar vices.

## CCCXVIII.

SANC'HA and LIC'HITA:—Of him who has been formally degraded, the right of inheritance, the funeral cake, and the libation of water, are extinct.

"Formally

"Formally degraded;" expelled by his kinſmen, with the ceremony of kicking down a water-pot *, for a crime *in the third degree*, ſuch as killing a *Cſhatriya without malice*, or the like.

The *Retnácara.*

Jímútaváhana explains "formally degraded," excluded from the joint libation of water. Both opinions coincide.

## CCCXIX.

Vrĭhaspati:—Though born of a woman equal in claſs, one who is not virtuous ſhall have no claim to the paternal eſtate; it is ordained to devolve on thoſe learned prieſts who offer the funeral cake to the deceaſed †.

2. A ſon redeems his father from every debt whatſoever due to ſuperior or inferior beings; no advantage is therefore gained through one who neglects that duty.

3. What can be done with that cow which neither affords milk, nor becomes pregnant? Of what uſe is that ſon who is neither learned nor morally good?

4. A ſon who has no ſacred knowledge, nor courage, nor induſtry, nor devotion, nor liberality, and who obſerves not immemorial good cuſtoms, muſt be conſidered as ſimilar to urine and ordure.

"Not virtuous" muſt be explained by the ſubſequent texts.

The *Retnácara.*

It conſequently ſignifies one deſtitute of good qualities, ſuch as *the willingneſs* to diſcharge the debts of the father and the like. "Not virtuous" is explained by Raghunandana, 'tainted with thoſe vices which are the reverſe of good qualities.' That is wrong; for the Sage, declaring uſeleſs a ſon devoid of good qualities, as deſcribed in the ſecond text (CCCXIX 2), intimates, that

* See Menu, Chap. XI, V. 185. † Alſo cited at V. 264.

that he is incapable of inheritance. A text of NÁREDA, bearing the same import, shall be cited.

By the word "though," the son of a woman unequal in class, and the substitute for a son, are assuredly excepted *in similar circumstances*. "Who offer the funeral cake *to the deceased*;" this phrase *(tat pindadáh)* is expounded in the *Retnácara*, who give food and apparel to this man who is devoid of good qualities. The inheritance and other rights therefore devolve on learned priests: it is also mentioned, that food and apparel must be allowed to this son who is destitute of good qualities. "Learned priests" are mentioned illustratively; the term comprehends any person who duly performs the obsequies and other constant and occasional rites. RAGHUNANDANA explains the term *tat pindadáh*, 'who offer the funeral cake to the deceased.' According to the *Retnácara*, 'highest and lowest debts' should be expounded "debts due to the superior beings, *such as* deities, sages, and progenitors; and those due to an inferior being, namely, man." According to HELÁYUDHA, the same terms must be explained, debts to a creditor, which are naturally degrading. By declaring him to be useless who neglects the duty mentioned in the text, that is, who wilfully omits to redeem his father, it is intimated that he is incapable of inheritance; for the law declares him alone entitled to possess the heritage who does confer benefits. The legislator mentions this, illustrating the principle by a simile (CCCXIX 3). "Learned" there signifies acquainted with right and wrong; "morally good" means practically virtuous. Here one who is acquainted with right and wrong, is compared to a pregnant cow; one who is practically virtuous, is compared to milch cattle. "Sacred knowledge, courage, and industry," (CCCXIX), severally relate to the three first classes; "devotion" and the rest concern all tribes. "Immemorial good customs;" the terms *may be explained* 'the practice of virtue to the utmost of 'his power.' "Must be considered as similar to urine and ordure;" as urine and feces are ejected through organs *of action**, so was he also ejected in the form of seminal juice. It follows, therefore, that a son, even though free from vice, who neglects to fulfil prescribed duties to the utmost of his power, is excluded from participation; else it were vain to pronounce him useless. Vice

* See MENU, Chap. II, V. 91.

Vice *here* ſignifies malicious wrong to others and the like. May not the determinate ſenſe of vice be here reſtricted to neglect of preſcribed duties? then the opinions of RAGHUNANDANA and the *Retnácara* would accord. It ſhould be noticed, that deficiency of good qualities, as a cauſe of excluſion, ſignifies the neglect of *fulfilling* indiſpenſable duties at the proper time and place; the ſame term, as uſed in the chapter on Sons of twelve deſcriptions, ſignifies neglect of voluntary acts of religion, which is a ground of inferiority in rank.

## CCCXX.

NÁREDA:—A profeſſed enemy to his own father, a degraded man, one deprived of virility, and a man formally expelled *by his kinſmen*, ſhall not inherit, though begotten by the deceaſed; much leſs if begotten on his wife by a kinſman legally appointed:

2. One afflicted with an obſtinate or an agonizing diſeaſe, and one inſane, blind, or lame, from his birth, muſt be maintained by the family; but their ſons may take the ſhares *of their parents.*

He who hates his father, is a profeſſed enemy to him: enmity is manifeſted by attempting his life and ſo forth; but after the death of the father, by withholding the libations of water and the like, *which ſhould be offered* for his ſake. "A man formally expelled;" one baniſhed with the ceremony of *kicking down* a water-pot, for a crime *in the third degree*, ſuch as killing a *Cſhatriya without malice* or the like. "Obſtinate diſeaſes" are atrophy and the reſt; "agonizing diſtempers" are leproſy and the like. Theſe perſons muſt be maintained or fed by the family, that is, by their brothers and the reſt. The *Retnácara.*

The author of the *Pracáśa*, reading *upapátací* (ſinner in the third degree), inſtead of *apapátrita* (formally expelled), explains it guilty of crimes in the third degree. JÍMÚTAVÁHANA and RAGHUNANDANA read *aupapática*; that likewiſe ſignifies guilty of crimes in the third degree. In the *Calpateru*, the text is read *apapátrita.*

*apapâtrita.* The exclufion of one formally expelled or degraded by his kinfmen, is exprefsly ordained in the text of SANC'HA and LIC'HITA. A finner in the third degree is only excluded from participation, in the cafe of repeated offences: crimes are therefore mentioned in the plural number. Degradation for a fingle offence only takes place in the cafe of more heinous crimes. "A profeffed enemy to his own father:" this accords with VRÍHASPATI; for, the exclufion of one who wilfully omits the performance of obfequies and the like is thus propounded. Though adorned with many virtues, fuch as liberality and the like, he is excluded from participation, if he refufe to perform obféquies and fimilar acts of piety. "Infane from his birth;" it is hereby intimated, that one who fubfequently becomes infane from the pernicious power of mineral drugs, or the like, is not excluded, any more than one who fubfequently becomes blind or lame. In the *Vivâda Chintâmeni*, the text is read "idiot *(ja'da)*, infane, blind, or lame," inftead of "infane, blind, or lame, from his birth *(janma)*:" "idiot" is there explained, one who is incapable of difcrimination. "But their fons fhall take the fhares of their parents;" confequently their fons fhall participate as grandfons; or if thefe be alfo fimilarly circumftanced, their grandfons fhall take the fhares as great-grandfons of the deceafed: but if thefe be likewife fimilarly circumftanced, no argument is hinted to prove the right of their fons *(who are great-great-grandfons of the late proprietor)* to take the fhares of their parents. However, the fon of a degraded man fhall not participate.

## CCCXXI.

DÉVALA:—On the death of a father, *or other owner of property*, neither an impotent man, nor a perfon afflicted with elephantiafis, nor a madman, nor an idiot, nor one *born* blind, nor one degraded for fin, nor the iffue of a degraded man, nor a hypocrite or impoftor *, fhall take any fhare of his heritage.

2. For

* The term is explained by fome commentators "a fraudulent wearer of facred marks." T.

2. For ſuch men, except thoſe degraded, let food and clothes be provided; and let the ſons of ſuch as have ſons take the ſhares of their parents, if themſelves have no ſimilar diſability.

"On the death of the father;" the meaning is, even on the death of the father. "A hypocrite;" one who rigidly practiſes auſterities with an intent to deceive. The *Retnácara.*

Of courſe, ſons have no right to the property of their father; it would therefore be ſuperfluous to ſay "on his death:" hence the word "even" is ſupplied.

A perſon afflicted with elephantiaſis, and who has not made expiation, *is excluded from* inheritance; but one who has made atonement ſhall take a ſhare, ſince the ſinful taint is removed; for that was the ſole cauſe of his excluſion. This is accurate; and in like manner, a perſon afflicted with maraſmus is only excluded if he have not made expiation. It ſhould not be argued, that the diſability of men tainted with ſin is ſhown by the mention of perſons degraded for their crimes: by the further mention of a "perſon afflicted with elephantiaſis," it is intimated, that the diſeaſe is, in its own nature, a cauſe of excluſion from inheritance. RAGHUNANDANA holds, that expiation for a man afflicted with elephantiaſis, or other ſimilar diſeaſe, is ordained for the purpoſe of enabling him to perform acts of religion ordained in the *Véda;* by parity of reaſoning, he becomes competent to inherit property, as well as to perform religious ceremonies: it is not found, in any other caſe, that a ſon competent to perform obſequies and other acts of religion is not qualified to inherit. The leper is ſeparately mentioned to deny his right of inheritance; which might be ſuppoſed, becauſe he is not a degraded perſon.

Although the ſinful taint be diminiſhed, is not a leper degraded becauſe the *original* crime was heinous? It ſhould not be objected, that the body in which the offence was committed is alone tainted with ſin, and the occupant of that body is alone degraded; but the crime having been perpetrated in another body, the occupant of the preſent one is not degraded. There is no argument by which this induction can be ſupported. To the

queſtion propoſed, the anſwer is, degradation ſignifies that ſtate which occaſions both diſability for acts of religion ordained in the *Vēda*, and a *final* doom to miſery in another world; but leproſy does not occaſion evil deſtiny in another world, nor does it cauſe diſability for acts of religion: in fact, a man ſo tainted with ſin ought not to undertake a religious rite, although elephantiaſis and the like have not enſued.

Is not a known crime the ſole cauſe of diſqualification for acts of religion? and hence they may be duly performed by one who is not conſcious of a crime which he has fortuitouſly committed in his preſent exiſtence. Again; if leproſy be a cauſe of diſqualification for religious ceremonies, why ſhould it not occaſion diſability for inheritance? As for the aſſertion, that, ſince the injunction of penance would otherwiſe be fruitleſs, he becomes equally capable of poſſeſſing property, and of performing acts of religion, (for there are no grounds of preference,) that is not accurate; for nothing oppoſes the aſſertion, that penance is undertaken leſt leproſy or the like enſue in a future birth.

The modern VÁCHESPATI BHATTÁCHÁRYA holds, that a crime in the firſt degree is inexpiable ſo far only as relates to the body in which the crime was committed; accordingly the obſervation of RAGHUNANDANA is accurate, that, ſince the cremation of a huſband guilty, in his preſent ſtate, of ſlaying a prieſt, is forbidden, one guilty of that crime, in a preceding ſtate, is alone redeemed by his wife dying with him. If expiation were refuſed to all bodies occupied by one guilty of a crime in the firſt degree, then cremation would be denied to a man tainted with ſin, even though it were committed in a former birth; the obſervation of RAGHUNANDANA would be therefore inaccurate; and a huſband guilty of ſlaying a prieſt, *in a preceding ſtate*, could not be purified by his wife dying with him. It ſhould not be argued, that cremation is only permitted when the degradation is unaſcertained, the crime committed in a preceding ſtate being unknown; but cremation is refuſed when that is aſcertained from elephantiaſis, or other token of ſin. As in the caſe of defilement, ſo in the preſent inſtance there is no argument for requiring *the previous* aſcertainment *of the fact*: it is not true, that, if a man employ, in the celebration of a ſacrifice, one who has committed a crime in the firſt degree which is unknown, a

ſinful

ſinful taint is not thereby contracted; for, when many perſons take a repaſt in company, it is directed by Sages that a line of ſeparation be drawn with water, ſand, or the like, through fear of aſſociating with a degraded man. Nor ſhould it be argued, that this is not RAGHUNANDANA'S opinion; but his meaning is, that cremation is refuſed to one who is a known ſinner; and no ſinful taint is contracted, if a ſacrifice be performed by the intervention of one guilty of ſlaying a prieſt, but whoſe crime is unknown: the practice of drawing a line of ſeparation is founded on the apprehenſion of aſſociating with one who conceals a crime of which he is guilty. Were it ſo, the expreſſion "in a preceding ſtate" would be unmeaning. As for the expoſition, which might be propoſed, "a crime committed in a preceding ſtate, which is concealed, is a ſin of a preceding ſtate, and one known in this life is a ſin of the preſent ſtate;" that is inadmiſſible; for it would be wrong to attribute to an author an implied meaning ſo ill juſtified. In like manner, adds VÁCHESPATI BHATTÁCHÁRYA, if the corpſe of one who has committed a crime which is unknown be burnt, thoſe who burn the corpſe muſt be acknowledged to be guilty of an offence, as they are if they burn the corpſe of one who has concealed his ſin.

This again does not hold good: a thing cannot be juſtified on the ſole conſideration of any author's aſſertion, without *ſupport from* reaſoning, *or from* the *expreſs* text of a legiſlator; for the ſimple aſſertion of a commentator may be any-how applied. For inſtance: a prieſt is a human being endued with ſtrength; he is not ſlain by the ſimple impoſition of hand or foot, without blow or wound; and that muſt be known: hence, *to ſuppoſe an unknown offence*, it is neceſſary to revert to a former birth. It ſhould not be objected, that no argument proves cremation to be forbidden then only when the ſin is known; and conſequently expiation is denied to that body alone, by the occupant of which the crime was committed. To ſecure the effect of dying with a huſband, namely, atonement for the crime of one guilty of ſlaying a prieſt, as it is neceſſary (this being an occaſional rite) that the occaſion of it be aſcertained; ſo likewiſe in a prohibited caſe, the cauſe, being aſcertained, ought to be conſidered as a ſufficient ground *for invalidating the act*. This really occurs in the caſe of one who takes a repaſt on the eleventh day of the moon,

 not

not being aware of the date. It ſhould not be argued, that no ſin is committed *by ſuch unintentional breach of an enjoined faſt.* As merit is not *gained* by one who abſtains from food on the night of 'SIVA *, without being aware *of that rigorous faſt;* ſo a forbidden act, being done, produces the ſin conſequent on ſuch act, although the cauſe *why it ſhould have been omitted* were unknown. It is indeed declared, as an inference drawn from the texts of MENU and YÁJNYAWALCYA, that, although a crime be unatoned, an act done ignorantly is valid: hence the cremation of one whoſe crime was unknown is valid; but thoſe who burn his corpſe contract a ſinful taint.

MENU:—The gods declared three pure things peculiar to *Bráhmanas;* what has been defiled without their knowledge; what in caſes of doubt they ſprinkle with water; and what they commend with their ſpeech.

YÁJNYAWALCYA:—What is not known *to have been defiled* is ever pure.

If it be ſaid, leproſy muſt alſo be affirmed to be a cauſe of diſability for performing acts of religion ordained in the *Véda;* to diſqualify one who does not know, through his acquaintance with the law, that this leproſy proceeds from a crime formerly committed; and, for the purpoſe of diſqualifying one who is ignorant of the law, it is not neceſſary that ſome perſon ſhould tell him, "it is inferred from this leproſy that a crime was committed by thee in a former ſtate;" then the anſwer is, admitting that leproſy is alſo a cauſe of diſability, what difficulty follows? what prevents a ſin aſcertained by leproſy, or the like, becoming the cauſe of diſability for performing acts of religion ordained in the *Véda?* VÁCHESPATI BHATTÁCHÁRYA, who contends that atonement is denied to that body in which a crime in the higheſt degree was committed, only admits that a body infected with ſanious leproſy, which is a token of a heinous crime, cannot obtain atonement. *But* if the ſinful taint be removed, that conſequence

* On the 14th lunar day of *Phálguna.*

ſequence is obviated. The following text declares ſanious leproſy to be the worſt ſort:

## CCCXXII.

*Bhawiſhya purána*:—Hear, O prieſt! the enumeration *of various ſorts* of leproſy, the laſt worſt than the firſt: bliſters on the feet, a deformity in the generative organs *, cutaneous fiſſures, true elephantiaſis, ulcers, coppery blotches, black and (eighthly) white leproſy.

3. Among theſe, that leper is moſt vile, in reſpect of all religious acts, who is afflicted with ulcers on all his limbs, *eſpecially* on his temples, forehead, and noſe.

4. When he dies, let his corpſe be caſt near a ſacred river, or other holy place, or at the root of a ſacred tree; let not a funeral cake or libation of water be offered, nor his corpſe be burnt, nor obſequies be celebrated.

5. Should a man through affection burn the corpſe of a leper, who has been ſix or even three months infected with the diſeaſe, that man muſt perform the lunar penance of an anchoret †.

Among thoſe lepers of eight ſorts, he who is incapacitated for all ſolemn rites is deſcribed (this word muſt be ſupplied) as afflicted with ulcers in all his limbs, or on his temples, forehead, or noſe. Since this is merely illuſtrative, he who is infected with that foul leproſy which is attended with ulcers on any other part of the body, is abominated, *and diſqualified* for all ſolemn rites. Or the term "on all his limbs," being employed by the ſame rule by which two names for kine are uſed at once

 in

* See Menu, Chapter xi. V. 49. *Duſcherman*, the term which occurs in the text, is explained as ſignifying the natural want of the foreſkin.

† Menu, Chapter xi. V. 219.

in a general and particular ſenſe, the meaning is, "on any part of the body, whether the temples and the reſt, or parts different therefrom." Or elſe the meaning may be, 'afflicted with ulcers 'on any one or more of all the parts of the body, or eſpecially 'with thoſe other ulcers called coppery, black, or white ſores, 'on any one of the parts ſpecified, namely the temples and the 'reſt: he who is afflicted with any one of theſe diſeaſes *is moſt 'abominated.*' "A leper who has been ſix or even three months infected with the diſeaſe, &c." according to the firſt opinion, if lepers die who had been ſix months afflicted with *one of* the other ſeven ſorts, or three months infected with ſanious leproſy, their bodies ſhall not be burnt; and, *if they live*, they become incapable of inheritance. Or the meaning is, 'after three months, if the 'ſanious leproſy ſpread over all the limbs; after ſix months, if 'it only invade the temples or the like.' Or the ſenſe may be, 'after ſix months, if the ſanious léproſy invade any part of the 'body in general; after three months, if it conſiſt in a coppery 'ſore or the like, which eſpecially attacks the temples and other 'parts mentioned *in the text.*'

It is ſaid, that, the ſinful taint being removed after penance performed, the degradation of the leper would be ſet aſide: neither Raghunandana nor 'Súlapáni have inferred, from the ſeparate mention of the leper, that his corpſe ſhall not be burnt, although he had performed penance. The unfitneſs for cremation after death being *thus* removed, he therefore becomes competent to perform acts of religion *during his life;* and this being proved, his right of inheritance is likewiſe eſtabliſhed by parity of reaſoning; and the leper is again expreſsly mentioned by the ſame rule by which two names for kine are at once employed in a general and particular ſenſe: ſince his degradation can only be inferred *by logical reaſoning*, men of weak underſtanding would not readily apprehend it; the *leper is therefore ſeparately mentioned*, to aſſiſt ready apprehenſion. The ſame muſt therefore be underſtood in reſpect of obſtinate agonizing diſeaſes (CCCXX). The opinion of Raghunandana and the reſt cannot be impugned on the ſole ground of the leper being ſeparately named. As for what is affirmed, that although the ſinful taint proceed from the murder of a prieſt, or other heinous crime, it is diminiſhed by long endurance, and is therefore no cauſe of degradation; and hence

hence the leper is ſeparately mentioned, becauſe he cannot be included in the term "degraded man:" (to which it ſhould not be objected, that although the ſinful taint be diminiſhed by long ſufferance, the nature of the taint remains *unaltered;* and RAGHUNANDANA is accurate in admitting, that bodies of men who had black teeth, or other corporeal marks of ſin, muſt not be burnt; were it ſo, it would be neceſſary to perform the penance of twelve years *:) that is wrong; for legiſlators have propounded penances *equivalent* to the ſufferance of ſuch pains as would be produced by that ſinful taint; and in the interval, when much has been already ſuffered, a penance equivalent to ſuch part as remains to be endured. "Degraded man" muſt be explained 'one who has done a criminal act;' elſe, ſince the iſſue of an outcaſt may be ſufficiently deſcribed by the ſimple term "degraded," the expreſſion "iſſue of a degraded man" would be ſuperfluous. But this man (the leper) is not one who has done a criminal act; for it was not done by *him in* his preſent body. If it be argued that diſability muſt be affirmed of him who is tainted with the ſin conſequent on that act, leſt the offender become capable of poſſeſſing *inherited* property when two days have elapſed after the murder of the prieſt, or other crime committed, ſince the act itſelf is not of long duration, then the ſon of the leper would be alſo diſqualified. Therefore the occupant of the body, by which a criminal act was committed, is alone diſqualified by reaſon of the ſinful taint ariſing from an act of the body; and the leper is ſeparately mentioned to ſuggeſt diſability ſo long as the ſinful taint remains, although he occupy a different body. Then a man who has black teeth or the like would be capable of inheritance, and ſo forth, even though penance have not been performed; and if this be deemed admiſſible, one who is afflicted with ſlight elephantiaſis being diſqualified, *though he be* not a greater ſinner than one who has black teeth, would not this be an unjuſt diſparity? By the word leper muſt be underſtood one infected with the ſanious kind; a man afflicted with ſlight leproſy, and one who has black teeth and the like, retain their right of inheritance, and ſo forth: accordingly the man who is infected with a particular ſort of leproſy, being alone deſcribed

 in

* MENU, Chapter xi. V. 73.

in the *Bhawiſhya purâna* as an abominated perſon (CCCXXII 3), the denial of cremation muſt be underſtood of him alone. It ſhould not be objected, that a man infected with grievous leproſy is diſqualified under the authority of the text, although he have performed penance, ſince no argument exiſts by which it can be proved that the term "a perſon afflicted with elephantiaſis" (CCCXXI) bears the ſecondary ſenſe of "tainted with ſin." If one who laboured under the full taint of ſin regain his rights when he has performed penance, and one who labours under the remains of ſuch ſinful taint be diſqualified, although he have performed penance, the diſparity would be unjuſt. Not the diſeaſe, but the ſin alone is the cauſe of diſability. This is ſtated on the authority of the opinion delivered by VÁCHESPATI BHATTÁCHÁRYA.

According to RAGHUNANDANA, they who have black teeth and the like, as well as he who is afflicted with ſlight elephantiaſis, (ſhould penance be unperformed,) can neither be burnt *after their deceaſe*, nor ſucceed to property *during their lives*; for theſe alſo are ſinners in the firſt degree, and the text expreſſes,

## CCCXXIII.

*Brahme purána*:—They who have committed crimes in the firſt degree, are conſidered as degraded perſons.

Would not the ſon of a leper, born before the diſeaſe broke out, be diſqualified as the iſſue of a degraded man? Say not, that is admiſſible; for it would be inconſiſtent with approved uſage. Nor ſhould it be affirmed, that in this place "degraded man" ſignifies one tainted with a ſin in the firſt degree; but in the expreſſion "iſſue of a degraded man," it ſignifies the occupant of that body whence the ſinful act proceeded. There is no argument on which various ſenſes can be eſtabliſhed for the word "degraded" twice uſed in the ſame ſentence (CCCXXI). If this be propoſed, the anſwer is, No; for, in both inſtances, the term degraded relates to the occupant of that body whence the ſinful act proceeded. For this reaſon only is the leper ſeparately mentioned; and thus, after premiſing degradation (CCCXXIII), the

the cremation of outcasts being forbidden in the *Brahme purána* (CCCXXIV), the cremation of lepers is consistently forbidden in the *Bhawishya purána* (CCCXXII), as they are outcasts. Degradation there signifies the state of one guilty of a crime in the first degree, and so forth. Consequently, cremation and the like being allowed to one who has performed penance, since he is no longer an outcast, the performance of prescribed acts of religion, such as obsequies and the like, is also deduced; and that being proved, his right of inheritance is also established.

## CCCXXIV.

*Brahme purána*:—Of degraded persons there shall be no cremation, nor funeral sacrifice, nor gathering of their bones.

By parity of reasoning, should not one who has black teeth or the like, and by whom penance has not been performed, be incapable of inheritance? but that is not declared by the text; his exclusion from inheritance is intimated by NÁREDA (CCCXX 2). 'SÁTÁTAPA has used the word "malady," which is synonymous with disease, as also signifying black teeth and other morbid changes.

## CCCXXV.

'SÁTÁTAPA:—The morbid mark proceeding from a heinous crime is reproduced in seven *successive* births: *the right of inheritance* is obstructed by malady; but that is removed by the first or common penance and the like*.

2. And so is leprosy, marasmus, gonorrhœa, and dysentery.

Any

* *Crich'hra*: MENU, Chapter xi. V. 209 and 212, (see also 125.) The term very frequently occurs in that Chapter, and is translated severe; but, taken as the name of a particular form of penance, it seems to be the same with that of PRAJA'PATI.

Any mark proceeding from a heinous crime is thus described as malady or disease. VISHNU also mentions black teeth as the mark of a sin in the first degree.

## CCCXXVI.

VISHNU:—They who have suffered the pains experienced in hell, and have passed through the reptile state, bear the marks *of their yet unexpiated crimes* in the human form; an atrocious sinner becomes leprous; the slayer of a priest is afflicted with marasmus; a drinker of spirits has black teeth; a stealer of gold has whitlows on his nails; the violator of his preceptor's *(guru)* bed has a deformity in the generative organs.

In the text of DÉVALA the word "elephantiasis" is illustrative of these *morbid changes;* for, in texts which will be quoted, it is expressed by the general term 'disease' or 'malady.' Then a man afflicted by gonorrhœa, or dysentery, would be also disqualified. Gonorrhœa, dysentery, and the rest, may also proceed from the pernicious effects of drugs; but if they be ascertained to be the marks of an atrocious crime, or of sin in the highest degree, disability is admitted by the terms of the text of NÁREDA (CCCXX 2). It is the same in the case of one who becomes insane in the course of his life. It should not be objected, that the special mention of him who is afflicted with ulcers (CCCXXII 3) would be superfluous. The distinction is this, men afflicted with very slight elephantiasis and the like are competent to perform the constant rites; but one infected with grievous leprosy is not capable of performing them.

To reconcile the discordant opinions of many wise persons concerning the competence of a leper *to inherit and to perform acts of religion*, various modes have been exhibited. But, according to both opinions, a man infected with grievous leprosy is in effect capable of inheriting when he has performed penance: according to RAGHUNANDANA and others, men afflicted with elephantiasis, marasmus, honey-coloured gonorrhœa, black teeth,

 and

and other distempers difficultly cured, are incapable of inheritance so long as penance be unperformed: according to VÁCHESPATI BHATTÁCHÁRYA, they are capable of inheritance. BHAVADÉVA holds, that a leper who has not performed penance *is excluded from succession.* This brief exposition may suffice.

" A madman," in the text of DÉVALA (CCCXXI), signifies one insane from his birth; for the import is the same with that of the text of NÁREDA (CCCXX 2). RAGHUNANDANA explains " idiot," one who cannot support the performance of duties: others explain the term, void of understanding. " Blind," signifies born blind; for it coincides with the text of NÁREDA. One degraded for sin is he who has slain priests, or committed some other atrocious crime, and who has not performed penance, *but, on the contrary,* is averse from it; for RAGHUNANDANA says, aversion from penance on the part of the fallen sinner contributes to the forfeiture of his right to his own property. His not being averse from penance contributes to his right in the paternal estate. But VÁCHESPATI BHATTÁCHARYA affirms, that 'aversion from penance is no cause of forfeiting his right in his own estate; penance, or other atonement, which legalizes his *claim to* property, can only be performed with money begged, during his fallen state, from his son, or from some other person. It is not proper to affirm, that his property in wealth acquired during his fallen state is forfeited by reason of his degradation. A degraded sinner would be always compelled to rob for his subsistence. However, should the son or other person take the heritage, and yet refuse to give money for the penance *to be performed,* he ought to be compelled to give it.' According to his opinion, the matter is not in this case regulated by aversion from penance.

" The issue of a degraded man;" issue born after the commission of the act, which is punished by degradation; for this agrees with the text of VISHNU (CCCXXVII). A hypocrite *or impostor* is explained, in the *Retnácara,* one who rigidly practises austerities with a fallacious intent.

CCCXXVII.

## CCCXXVII.

VISHNU, after premiſing the fallen ſinner, the eunuch, and the reſt:—The legitimate ſons of theſe *are ſharers of the patrimony*; but not the ſons of a degraded man, born after the commiſſion of the act which is puniſhed with degradation, nor thoſe who are procreated in the inverſe order of the claſſes: their ſons do not participate even in the property left by the paternal grandfather.

"Of theſe" perſons above mentioned, the legitimate ſons (that is merely illuſtrative, for the eunuch can have no ſon of his body,) are ſharers: the ſenſe muſt be ſo completed. The legiſlator excepts the offspring of an outcaſt, "but not the ſons of a degraded man, &c." "Nor thoſe who are procreated in the inverſe order of the claſſes," by a man of the military or other lower claſs, on a wife of the ſacerdotal or other higher claſs; or by a *Brâhmana* on a *Cſhatriyá* wife, eſpouſed ſubſequently to his marriage with a *Vaiśyá* one, and ſo forth.

The legiſlator alſo declares their offspring unentitled to participation: "their ſons, &c." "Property left by the paternal grandfather;" this is merely illuſtrative, ſay ſome lawyers, and it includes wealth left by the great-grandfather. But others affirm, that their grandſons have a claim to the eſtate of the paternal great-grandfather, becauſe the text *only* expreſſes "property left by the paternal grandfather." It ſhould be conſidered, that no argument exiſts on which the ſecondary ſenſe can be aſſumed.

## CCCXXVIII.

BAUDHÁYANA:—Perſons incapable of tranſacting buſineſs, blind men, idiots, thoſe who are immerſed in vice, or afflicted by *incurable* diſeaſes, and *even* thoſe who neglect their duties, (but not the degraded nor their iſſue,) let the heirs ſupply with food and apparel.

"Perſons

"Perſons incapable of tranſacting buſineſs;" not become capable of civil tranſactions. The *Retnácara*.

The terms may be alſo explained, neglecting civil affairs, and ſolely devoted to acts relative to another world. "With food and apparel;" according to the *Retnácara*, *this ſhall be ſupplied* out of their own allotments committed to kinſmen in truſt *for their uſe*. "Blind men;" perſons born blind. "Thoſe who are immerſed in vice;" the term *(vyaſana)* is explained by AMERA, danger or calamity, falling low or erring, vice proceeding from luſt or wrath: conſequently the heir muſt ſupport thoſe who have fallen off from their duty, that is, who are addicted to gaming and the like; and ſuch as are impelled by vice proceeding from luſt, that is, addicted to the frequentation of courteſans; and thoſe who are impelled by vice proceeding from wrath, or who always deſign miſchief to others: it follows from the maintenance ordained, that they ſhall be excluded from participation.

The *Brahme purána* expreſſing *that* irreligious impoſtors, and thoſe whoſe minds are perverted, *ſhall not be burnt;* and RAGHUNANDANA expounding the laſt term as ſignifying thoſe who maliciouſly injure others; it is eſtabliſhed, that to ſuch as are malignantly miſchievous, cremation ſhall be refuſed; it is therefore reaſonable that they ſhould be excluded from inheritance. "Afflicted by *incurable* diſeaſes;" by elephantiaſis or the like. "Thoſe who neglect their duties;" *or* who are diſqualified for acts of religion, ſuch as ſacrifice or the like. Thus *a ſimilar term is uſed in the following verſe:*

Wealth is conferred for the ſake of defraying ſacrifices; therefore diſtribute it among honeſt perſons for that purpoſe, but not among women, ignorant men, or ſuch as neglect their duties*.

"Ignorant;" unacquainted with the *gáyatri;* not knowing the ſenſe of that prayer. RUDRADHARA.

"One who neglects his duties;" one who performs not the ceremonies enjoined at morning and evening twilight, and at noon, nor other daily acts of religion: a woman is diſqualified for ſacrificing

* See Chap. VIII. (V. ccccxiii).

crificing, becaufe fhe is incapable of facred knowledge. The legiflator declares an ignorant man, and one who neglects his duties, incompetent to facrifice.

Him who neglects folemn rites, the ignorant man, one who is afflicted by a grievous malady, and one who acts according to his mere pleafure, the wife have declared impure even until death.

Confequently, by declaring them impure until their death, it is intimated that they are unfit for celebrating a facrifice, for which purity is required.

But JÍMÚTAVÁHANA reads *acarmacarminah* "thofe who "practife what is inconfiftent with duty," inftead of *acarminah*, "thofe who neglect their duties:" according to his opinion, perfons addicted to gaming and the like are intended by that term. "But not the degraded, nor their iffue;" thus, excluding outcafts and their offspring from fupplies even of food and apparel, it furely follows that they are deprived of their fhares.

## CCCXXIX.

MENU:—Eunuchs and outcafts, perfons born blind or deaf, madmen, idiots, the dumb, and fuch as have loft the ufe of a limb, are excluded from a fhare of the heritage;

2. But it is juft that the heir who knows his duty fhould give all of them food and raiment *for life* without ftint, according to the beft of his power: he who gives them nothing, finks affuredly *to a region of punifhment*.

3. If the eunuch and the reft fhould at any time defire to marry, *and if the wife of the eunuch fhould raife up a fon to him by a man legally appointed, that fon*, and the iffue of fuch as have children, fhall be capable of inheriting.

"Perfons

" Persons born blind :" by the mention of birth the legislator suggests the incurableness, not the origin of the blindness. " Idiot ;" devoid of knowledge of himself and others. By the mention of " such as have lost the use of a limb," persons lame or the like, who are disqualified for acts of religion ordained by revealed and memorial law, are suggested. To all these, namely, to eunuchs and the rest, food and raiment must be given without stint as long as they live. " If the eunuch and the rest should at any time " desire to marry :" this apposition is in the form called *bahubríhi*, not however connecting the attribute or proposition with each member of the compound term ; for the eunuch is incapable of procreating offspring. But the author of the *Pracáśa* considers " impotence " as determinately signifying incapacity of propagation, arising from a defect which may hereafter be removed : he does not therefore acknowledge the apposition to be that form of *bahubríhi*, which connects not the attribute with each member of the compound term. Thus far the *Retnácara*. The meaning is, as persons afflicted by a hopeless malady must be supplied with food and raiment, so must he who is afflicted by incurable blindness, and so forth. That is not the opinion of CULLÚCABHATTA ; for he expounds the text, ' eunuchs, fallen sinners, ' persons born blind, or devoid of the sense of hearing, madmen, ' those who support not the performance of duty, and such as are ' deprived of speech.' JÍMÚTAVÁHANA says the word " born " is connected both with " blind " and with " deaf." In expounding the text of DÉVALA above cited (CCCXXI), he says " blind " signifies born blind ; for this coincides with the expression " born blind or deaf" *in the text of* MENU. In practice, the succession of one who becomes deaf in the course of his life occurs, even though the deafness be incurable : the same is also proper in a case of blindness. Consequently the term must be understood as signifying one born blind, or born deaf. It is expressly declared by NÁREDA (CCCXX). " Idiots :" through want of knowledge, not through absorbed contemplation of the divinity *(in which state a man is wholly insensible to every occurrence, and might therefore come within the definition of idiot)*. " Such as have lost the use of a limb ;" not such as have lost any organ generally, (for that would include a vain repetition of the terms blind and deaf ;) but such as have lost the use of some one limb ; for exam-

ple,

ple, wanting the uſe of a hand, or of a foot. The repetition of "blind" and the reſt may be ſuppoſed by the ſame rule by which two names of kine are at once employed in a general and particular ſenſe. "Wanting the uſe of a foot" in effect ſignifies lame.

The conſtruction of the ſecond text (CCCXXIX 2) is this: it is juſt to give all of them, namely eunuchs and the reſt, food and raiment for life. From the concluſion of the ſecond verſe (CCCXXIX 2) it muſt be inferred, that he who does not willingly give *food and raiment*, ſhall be compelled to give it. The uſe of ſuppoſing an appoſition in that form of *bahubrihi* which connects not the attribute with each member of the compound term, is, that the word to which the term "and the reſt" is ſubjoined, may not be included in the appoſition: hence the meaning would be, 'if the reſt, excluding the eunuch, ſhould deſire to marry.' But that is queſtionable; for MENU declares that an eunuch may adopt a ſon begotten on his wife duly authorized (CCXXXI*), and BAUDHÁYANA has delivered a ſimilar text (CCXXXVII). According to the author of the *Pracáſa*, this law (CCCXXIX 3) regards one who becomes impotent in the courſe of his life. That is queſtionable; for, as one who becomes blind in the courſe of his life ought to ſhare the heritage, ſo ought one who becomes impotent. As it is recorded in the *Bhárata*, that SIC'HAN'DINÍ, daughter of DRUPADA, did eſpouſe a wife†, ſo it may likewiſe happen that an eunuch, miſtaken for a man, may contract a marriage. Impotence is of two kinds: the impotence of one who is deprived of the generative organ, and the incapacity of doing the virile act, although the generative organ exiſt. The laſt is deſcribed by CÁTYÁYANA:

## CCCXXX.

CÁTYÁYANA:—He is called impotent whoſe urine froths

* The compiler has cited the commencement of another text in MENU's name. I have made the reference to a ſimilar text of MENU. T.

† DRUPADA, during his wife's pregnancy, vowed he would kill the child ſhould it prove female: his wife, to ſave her infant, impoſed SIC'HAN'DINI' on her huſband for a ſon. A fable is told of her exchanging ſexes with a *Yacſha*, or benevolent genius. T.

froths not, whose feces sink in water, and whose generative organ is deficient in erection or in seminal juices.

Although the eunuch and the rest should not marry, they may adopt children, such as sons given and the rest; and therefore the phrase "if they should desire to marry" is exceptionable. If the degraded sinner have a wife married before he became an outcast, the son of his wife, or other male child adopted during his degradation, and the son of his body procreated before it, may claim shares of the heritage; as appears from texts of DEVALA and others above cited.

## CCCXXXI.

YÁJNYAWALCYA:—An outcast and his son, an eunuch, one lame, a madman, an idiot, one born blind, and he who is afflicted by an incurable disease, must be maintained without any allotment of shares.

"His son," procreated after his degradation. "An idiot;" one whose intellectual faculties are imbecile. "An incurable disease;" a hopeless leprosy and the like. By this term "and the like," other persons, described by other Sages as excluded from participation but entitled to maintenance, should be comprehended in this law. The *Retnácara.*

He who cannot walk on either foot, says JÍMÚTAVÁHANA, is lame. According to his opinion, if one foot can be used in walking, there is no true lameness. He who cannot walk on both his feet, say modern lawyers, is lame. According to their opinion, if both feet can be used in walking, then *only* is there no lameness: consequently a man is called lame, even though he can move on one foot. The opinion of JÍMÚTAVÁHANA is alone correct; for, in the text of MENU, the general failure of organs is not signified by the expression "such as have lost the use of a limb," (literally such as have not *their* organs:) were that the meaning, one who had only lost the use of his hands would be capable of inheriting. Logicians do not acknowledge any essen-

tial property common to all organs and peculiar to them: hence a general failure of them *all* cannot be affirmed by a single term; but the general failure of a particular one *may be so affirmed*. That may be the total failure of *power to use* the hands or feet; the total failure of the sense of smelling or tasting; the deprivation of sight, *which constitutes* blindness; deprivation of hearing, *which constitutes* deafness; the total failure of the generative organs, *which is called* impotency; dumbness, or the total failure of speech, which depends upon the tongue: if the organ of excretion were totally deficient, life would cease through the suppression of dejections. An organ is a certain thing affixed to its proper place, namely to a lump of flesh (or part of the body). Accordingly the virile act cannot be performed if a certain thing so denominated be wanting in the virile member; and so in respect of others. Consequently, if the man have the use of one hand, or of one foot, there is no general failure of those organs respectively. Again; since the purport is the same with that of the text of MENU, the same must be likewise understood in this instance from the term "lame." In practice, he alone is deemed so who cannot move even one foot.

"Blind" signifies born blind. So the *Dípacalicá*. It should here be remarked, that the term "lame," being contiguous to the word blind, must signify born lame. In like manner, "persons deprived of the use of their hands" must signify such as are destitute of the use of both hands from the day of their birth. By "the virile member" is not meant the organ of discharging urine, but *that member considered as* the instrument of procreation; as is expressed in the *Srí Bhágavata*, "the parts of generation are "distinguished by the sense of pleasure in *the act of* propagation."

## CCCXXXII.

YÁJNYAWALCYA:—But their sons, whether begotten in lawful wedlock, or procreated by a kinsman on the wife duly authorized, may take shares, provided they have no disability.

On this text commentators remark, that two sons of lepers and the

the reſt, namely, one legally begotten, and one produced by a wife duly authorized, but not their other ſons, are capable of inheriting. That is not ſatisfactory: for the iſſue of an appointed daughter, the ſon given, and the reſt, are faultleſs; and the offſpring of the wife, and the ſon legally begotten, are not ſpecially mentioned in the texts of MENU and the reſt. It ſhould not be argued, that no ground of preference exiſts whether the text of MENU ſhall be reſtricted as bearing the ſame import with the text of YÁJNYAWALCYA, or this be conſidered as exhibiting inſtances which elucidate the meaning of the other.

## CCCXXXIII.

VRĬHASPATI:—MENU holds the firſt rank among legiſlators, becauſe he has expreſſed in his code the *whole* ſenſe of the *Véda;* no code is approved which contradicts the ſenſe of *any law promulgated by* MENU.

Still, as the general term "iſſue," which occurs in the expreſſion "the iſſue of ſuch as have children ſhall be capable of inheriting," and which might be conſtrued as declaring their daughters to be alſo competent to inherit, is explained male offspring, from the coincidence with texts of other legiſlators; ſo may not the ſame term be explained (from the concurrent import of the text of YÁJNYAWALCYA), as ſignifying male iſſue, either begotten in lawful wedlock, or procreated by a kinſman on a wife duly authorized? No coincidence with texts of other Sages, but with another law promulgated by the ſame legiſlator, is the ground on which "iſſue" in the text of MENU is explained male offspring: for, when partition of the father's eſtate is made by his children, it appears from the text, "Either let them ("brothers" had been premiſed) thus live together, &c." (XVIII), that the diviſion ſhall be made by his male children; ſurely the ſame appears when the eſtate of the paternal grandfather is divided. "Sons procreated by a kinſman on a wife duly authorized," being mentioned in the plural number, muſt be underſtood to ſignify "and the reſt;" for it is recorded, that, when the enumeration ends with a term

in the plural number, it ſuggeſts others of the ſame *ſet*. "Provided they have no diſability;" that is, provided they are free from defects which cauſe excluſion from inheritance, ſuch as blindneſs, deafneſs, and the like. "They may take ſhares;" not a mere maintenance.

## CCCXXXIV.

YÁJNYAWALCYA:—Their daughters muſt be ſupported ſo long as they be not diſpoſed of in marriage:

2. And their childleſs wives, who preſerve chaſtity, muſt be ſupplied with food and apparel; but diſloyal and traitorous wives ſhall be baniſhed from the habitation.

Since it is directed that daughters muſt be ſupported ſo long as they be not diſpoſed of in marriage, it appears that the nuptials ſhall be defrayed, and that if no ſhare be received by a ſon; but if the ſon do take a ſhare, his ſiſter muſt be ſupported, and her nuptials defrayed by him alone, as *is done in common caſes* by a ſon whoſe father is dead. He alone muſt likewiſe ſupport his own father, *who is diſqualified*. Even an eunuch may have a daughter begotten on his wife by a kinſman; but no text of law is found to prove that he may have one received in donation or the like.

The legiſlator mentions "childleſs wives," alluding to the married wives of eunuchs and the reſt. So the *Retnácara*. It is there ſuppoſed that the female ſlaves * and the reſt need not be maintained: "their," or of them, is conſidered as the ſixth caſe denoting connexion by marriage. But, in fact, when the wife and daughters of the eunuch are ſupplied by his brothers with food and apparel, his male and female ſlaves ought likewiſe to be maintained by them. Twice-married women, and other adulterous wives, however they became ſo, ſhall not be ſupported. "Traitorous wives:" this term, according to the *Retnácara*, poſitively denotes treaſon, ſuch as the attempt to adminiſter poiſon or the like;

* The tranſlation does not preſerve the ambiguity of the text. The word which is here tranſlated wife, has the ſame import with the French *femme*; and might ſignify any woman appertaining to the eunuch, even a female ſlave or ſervant. T.

like; not merely a contentious ſpirit. Conſequently the ſame married wife, who ought to be baniſhed from the habitation by her huſband, ſhall in like manner be expelled by his brothers and the reſt.

## CCCXXXV.

Gótama:—An idiot and an eunuch muſt be ſupplied with food and raiment, but the offspring of an idiot may claim a ſhare: like iſſue by a `*Súdrá*, ſons begotten in the inverſe order of the claſſes *ſhall receive a proviſion for their ſupport.*

From the term "claim" it muſt be underſtood as made evident, that, if he is the heir, on the death of the paternal grandfather, then only ſhall he take a ſhare; this ſon of an idiot ſhall not participate while his paternal grandfather lives. "Like iſſue by a `*Súdrá*;" that is, like a ſon by a `*Súdrá* not legally eſpouſed: conſequently a mere ſubſiſtence ſhall be allotted to him; but if there be no other heir, he ſhall receive a ſhare: hence, like iſſue by a `*Súdrá*, ſons born of women married in the inverſe order of the claſſes, ſhall, if ſtrictly obedient, have a proviſion for their ſupport; *that is, a maintenance* ſimilar to that which muſt be given to the ſon by a `*Súdrá*. The *Retnácara*.

But the ſon by a `*Súdrá* may take a ſingle ſhare by the texts of Menu (CXXXIX 4) and Yájnyawalcya (CXLII): were the ſame admitted in the caſe of the ſon produced by a woman married in the inverſe order of the claſſes, it would contradict the rule of Vishnu.

## CCCXXXVI.

Vishnu:—Sons begotten on a woman *married* in the inverſe order of the claſſes, are no ſharers of the heritage.

## CCCXXXVII.

Cátyáyana:—The ſon of a woman not taken in

 marriage

marriage according to the order of the claſſes, or of one related by blood (*ſagótra*) to her huſband, and a man who has aſſumed the order of a religious anchoret, are never capable of inheritance.

2. However, the ſon of a woman not taken in marriage according to the order of the claſſes may be heir, provided he belong to the ſame tribe with his father; and ſo may he who is born of a woman unequal in rank, but taken in marriage according to the order of the claſſes.

3. The ſon of a woman who bears children to a huſband married in the inverſe order of the claſſes, ſhall not participate in the heritage; but food and apparel muſt be given him without ſtint by his kinſmen.

4. On failure of collateral heirs, he may receive the paternal eſtate; and kinſmen ſhall not *in other caſes* be compelled to give him *food and raiment* out of any property not inherited from his father.

"The ſon of a woman not taken in marriage according to the order of the claſſes;" that is, a ſon begotten by a prieſt on a young woman of the military or other tribe, married in breach of that order which is preſcribed by the law when damſels of various claſſes are eſpouſed *by one man;* that ſon is not capable of inheriting.

The ſon of a *Bráhmana* by a *Bráhmaní*, or of any other man, by a woman of his own tribe, not married according to the order of the claſſes, inherits his eſtate; as is declared by the text (CCCXXXVII 2). The ſon of a *Bráhmana*, or other man *of ſuperior claſs*, by a *Cſhatriyá*, or other woman of *inferior tribe*, taken in marriage according to the order of the claſſes, is capable of inheriting, though, ſtrictly ſpeaking, unequal in rank; as is declared in the ſame text. The ſon of a woman ſuperior in claſs, but married to a man of a lower tribe, is not capable of inheritance; as declared in the ſubſequent verſe. "But food and apparel

parel muſt be given him:" if there be kinſmen, they muſt give food and apparel; but if there be none, he himſelf may take the paternal eſtate: if the wealth left by his father be not received by kinſmen, (the negative *a* in this phraſe, "*apitryam tad d'hanam práptam*," is referred to the word *práptam* received; for *a*, *má*, *nó*, and *ná*, are terms of negation): then food and apparel need not be given. In the text, "the ſame tribe" is referred to the term "with the father;" in the ſequel of the ſame verſe, the conſtruction is, "he who is born of a woman unequal in rank, but taken in marriage according to the order of the claſſes, may be heir."

Again; a ſon who is born of a woman deſcended from the ſame primitive ſtock with her huſband, is not capable of inheritance: neither is a man who has aſſumed the order of a religious anchoret, even though he quit it to reſume the order of a houſekeeper. Such is the mode of interpretation approved in the *Retnácara*. Even though he remain in the order of a religious anchoret, he does not receive the heritage in right of its having belonged to his father. That VAS'ISHT'HA declares:

## CCCXXXVIII.

VAS'ISHT'HA:—Thoſe who have aſſumed another order, are excluded from participation.

Another order than that of a houſekeeper or *married man*.

The *Retnácara*.

"The ſon of a woman related by blood to her huſband (as claiming deſcent from the ſame primitive ſtock), *is not capable of inheritance*;" by parity of reaſoning, the ſon born of any mother, who ought not to have been eſpouſed, *is diſherited*. That is a mere inſtance of a general meaning; the ſons of a young woman ſprung from the ſame derivative ſtock* with her huſband, or related to him within the ſeventh degree *on the father's ſide*, or

 within

* *Pravara*; the ſubdiviſion of *gótra*. Having tranſlated *gótra* primitive ſtock, I interpret *pravara* derivative ſtock. In the eighth chapter I tranſlate *ſagótra* deſcendant from the ſame ancient ſage, and *ſamána pravara* ſprung from the ſame branch of a venerable ſtock; adopting thoſe terms from a note of Sir WILLIAM JONES, on a text cited in the *Vivádárnava ſétu*. T.

within the fifth degree *on the mother's ſide*, are excluded from participation.

Then, would it not follow, that a ſon begotten by her huſband, after the ſolemnity of marriage, on a young woman whoſe ſeaſons had commenced before marriage, ſhould be excluded from inheritance *(for ſuch a woman ought not to be eſpouſed)?* It ſhould not be anſwered, that, in reſpect of women ſprung from the ſame derivative ſtock and the like, an exception, (by which term is meant negation relative to that with excluſion of which the rule of action has been ſettled;) is deduced by parity of reaſoning from the text of MENU (Book IV, V. clxxxv 2), and from others of the ſame import, such as this, " let not a man eſpouſe a wife ſprung from the ſame primitive or derivative ſtock with himſelf:" and in an excepted caſe the act is illegal *and void:* conſequently, ſince the marriage of a woman ſprung from the ſame primitive ſtock and the like is void, her ſon is excluded from inheritance; but a woman whoſe ſeaſons have commenced, not being *ſo* excepted, her ſon ſhall partake of the heritage. We reply: a woman who has arrived at puberty, is alſo excepted by the following text:

A man aged thirty years may marry a girl of ſixteen, whoſe ſeaſons have not commenced.

AMERA ſtates the term which occurs in this text *(nagnicá)* as ſynonymous with *anágatártavá*, which ſignifies, " a girl whoſe ſeaſons are not come."

It ſhould not be argued that the text, " a man may marry a girl whoſe ſeaſons have not commenced," relates to proper marriages in a moral view; for, on the ſubject of a marriage with a young woman who has arrived at puberty, a cenſure is delivered: " Conſider him as the lord of a *Súdrá* wife, as one for whom obſequies muſt not be performed, and with whom none ſhould aſſociate:" it is not intended, by the text above cited, to declare void the marriage of a young woman whoſe ſeaſons had commenced. Many Sages have alſo declared it an offence to marry a woman ſprung from the ſame primitive ſtock and the reſt: it might be affirmed in like manner, that marriage with a woman

not

not ſprung from the ſame primitive ſtock is morally right, *and that the reverſe is not civilly wrong*. To the queſtion propoſed ſome reply, it is admiſſible. But others ſay, in practice it is obſerved, that a ſon born of a marriage with a woman who had arrived at puberty, does obtain a ſhare of the heritage: therefore, marriage with a woman ſprung from the ſame primitive ſtock is void; but with a girl whoſe ſeaſons have commenced, it muſt be deemed valid, like marriage with a *'Súdrá*. Accordingly, Sages direct the repudiation of a woman ſprung from the ſame original ſtock with her huſband, who had been eſpouſed by miſtake, if the affinity be afterwards diſcovered.

## CCCXXXIX.

SUMANTU:—He who marries the daughter of his father's or of his mother's ſiſter, or of his maternal uncle, or a girl ſprung from the ſame primitive ſtock with his mother, or deſcended from the ſame ancient Sage *with his father*, muſt perform the lunar penance, and, divorcing that wife, muſt ſupport her.

## CCCXL.

BAUDHÁYANA:—He who inadvertently marries a girl ſprung from the ſame original ſtock with himſelf, muſt ſupport her as a mother.

"Deſcended from the ſame ancient Sage," in the text of SUMANTU, ſignifies ſprung from the ſame primitive or derivative ſtock. Legiſlators have not ordained repudiation in the caſe of a woman *eſpouſed* after her ſeaſons had commenced; conſequently, ſince no divorce takes place, he is bound to approach her in due ſeaſon: hence the production of offspring by ſuch a wife is legal, and the ſon ſhall therefore take a ſhare of the heritage. Since 'SÚLAPÁNI remarks in the *Práyaschittavivéca*, that the alluſion to women ſprung from the ſame primitive or

derivative

derivative ſtock, in the text of SUMANTU, is a mere inſtance of a general meaning, and ſince RAGHUNANDANA concurs in that opinion, muſt not a woman eſpouſed after her ſeaſons had commenced be alſo repudiated? No; for the implied ſenſe is, any woman who ought not to be married by reaſon of affinity.—Again; ſince the repudiation of a young woman bearing the ſame name with the mother *of her huſband*, is alſo directed in the hymn to VISHNU aſſuming the form of a fiſh *, it muſt be underſtood, ſay theſe lawyers, that her ſon ſhall be excluded from inheritance. It ſhould be remarked, that ſince the marriage of a *Súdra* with a woman ſprung from the ſame primitive ſtock is authorized, the ſon born of ſuch a marriage is capable of inheriting.

"The ſon of a wife not authorized to have iſſue by another, and the ſon begotten by the brother of the huſband, on a wife who has a ſon then living, are both unworthy of the heritage" (CCXXXIV); the ſon who is begotten on a wife not authorized by ſpiritual parents, on failure of the huſband, is unworthy of a ſhare in the heritage of her huſband, or of his own natural father. "Even the ſon of a wife duly authorized, not begotten according to the law *which has been propounded*, is unworthy of the paternal eſtate" (CCXXVI).

## CCCXLI.

GÓTAMA:—A ſon begotten by another on a woman whoſe huſband's brother is living, ſhall not take a ſhare of the heritage.

Iſſue begotten by another, although the huſband's brother be living, is not capable of inheritance. The *Retnácara*.

## CCCXLII.

NÁREDA:—Thoſe who are begotten by one, or by ſeveral fathers, on a woman not authorized to have iſſue by another, are all unworthy of the heritage;

* The *Matſya-ſúcta*, a hymn extracted, I believe, from the *Véda*. T.

age; and they are ſons of their natural fathers only:

2. They may offer the funeral cake to their natural father, if their mother were obtained for a price paid to her huſband; but if ſhe were not purchaſed, they ſhall offer the funeral cake to her huſband alone.

"On a woman not authorized to have iſſue by another;" on a diſloyal wife. "They are unworthy of the heritage;" they do not ſhare the eſtate of her huſband. The *Retnácara.*

They ſhare not the eſtate of their mother, nor of her huſband, nor of their maternal anceſtors. The *Pracáſa.*

The notion is, that the word "only," in the phraſe "they are ſons of their natural fathers only," excludes the mother, maternal grandfather, and other anceſtors. They ſhall take the heritage of the natural father, and not merely offer the funeral cake to him (CCCXLII 2). If the mother were purchaſed by paying a fee or price to her huſband for the ſake of obtaining iſſue, *they may offer the funeral cake to the natural father*; but if no purchaſe took place, they ſhall offer it to the married poſſeſſor of their mother. Such is the interpretation delivered in the *Retnácara.*

## CCCXLIII.

Náreda:—He who procreates iſſue, on a woman purchaſed for a price *paid to her huſband, claims the offspring*; but if not purchaſed for a price *ſo paid*, the iſſue of the woman belongs to her huſband alone.

## CCCXLIV.

Menu:—If two ſons, begotten by two *ſucceſſive huſbands, who are both dead,* contend for their property, then in the hands of their mother, let each

take,

take, exclusively of the other, his own father's estate.

Here the woman must either be a strumpet, a twice-married woman, or a disloyal wife. Thus the *Párijáta*, with which the *Retnácara* concurs. It should be here remarked, that, according to the *Retnácara*, the son begotten on a woman purchased by the payment of a price, though not authorized to have issue by another *than her husband*, shall offer the funeral cake to his mother's husband alone: but that contradicts the text of Menu (CCLIV). It should not be argued, that this text relates only to intercourse with the wife of another, for the sake of obtaining issue for himself. That is incompatible with reasoning; for, if the seed, *or male power* alone, generate a son, how can the child belong to the husband of the mother? Some affirm, that this must be established on the sole authority of positive law. Others hold, that the son of a woman not purchased from her husband becomes his offspring, by the text of Náred'a (CCCXLII). That the son of a woman purchased from her husband is the issue of his natural father, must be deduced from the subsequent text (CCCXLII 2). "Not authorized to have issue by another" can be no significant epithet of a woman sold by her husband for a price received. The subsequent remark, "but if she were not purchased, &c." relates to a woman fraudulently authorized to have issue by another. The text of Menu (CCXXIV) also relates to the case of a woman who was not bought: why it has been explained by the author of the *Retnácara*, as relating to a wife purchased *from her husband*, may be questioned. This concise exposition may suffice.

## Sect. II.—*On Property not subject to Partition.*

### CCCXLV.

Menu:—Wealth acquired by learning, belongs exclusively

clusively to any one of the brothers who acquired it; so does any thing given by a friend, received on account of marriage, or presented as a mark of respect to a guest.

Since the word "exclusively" precludes the rest of the brethren, it follows, that such wealth is not subject to partition.

What is received as a mark of respect, when a *madhuperca*, or gift of honey, curds, and butter, is presented, belongs exclusively to him *who receives the present*. The *Retnácara*.

## CCLXXVI.

VYÁSA:—Wealth acquired by learning, or gained by valour, or received from affectionate kindred, belongs, when partition is made, to him who acquired it, and shall not be claimed by the coheirs.

"Gained by valour;" acquired in war or the like.

The *Retnácara*.

## CCCXLVII.

CÁTYÁYANA:—What has been acquired by learning, after instructions received from a stranger, and a maintenance provided by one of a different family, is called wealth gained by learning:

2. What is gained by proving superior learning, after a prize has been offered by *some third person*, must be considered as the acquisition of a scholar, and ought not in general to be divided among coheirs:

3. So what has been received as a gift from a pupil, as a gratuity for the performance of a sacrifice, as a fee

fee for anſwering a queſtion in caſuiſtry, or for aſcertaining a doubtful point of law; or what has been gained as a reward for diſplaying knowledge, or for victory in a learned conteſt, or for reading the *Véda* with tranſcendent ability:

4. Such wealth have the Sages declared to be the acquiſition of ſcience, and not ſubject to diſtribution; and the law is the ſame in regard to *liberal or elegant* arts, and to increaſe of price from ſuperior ſkill in them.

5. A prize which has been offered for the diſplay of ſuperior learning, and a gift received from a votary for whom a ſacrifice was formerly performed, or a preſent from a pupil formerly inſtructed, Sages have declared to be the acquiſition of ſcience: what is otherwiſe acquired, is *the* joint property *of the coheirs*:

6. Even what is won by ſurpaſſing another in learning, after a ſtake has been depoſited, VRĬHASPATI pronounces the acquiſition of knowledge, and impartible:

7. What is obtained by the boaſt of learning, what is received from a pupil, or for the performance of a ſacrifice, BHRĬGU calls the acquiſition of ſcience.

"After a maintenance provided by one of a different family," and by him only; elſe the text would be unmeaning, becauſe every perſon who ſtudies long, is at times ſupported by one of a different family. "Maintenance" is merely illuſtrative, comprehending veſture and the like. This is accurate. "One of a different family" alludes to the father. Conſequently, what is acquired by that learning which was attained without uſing the property of the father, and not generally any wealth gained by the

the application of ſcience, is technically called wealth gained by learning. In like manner, it muſt be alſo underſtood that the means of ſubſiſtence common to the brethren or other parceners have not been uſed. The lawgiver propounds a diſtinction reſpecting the mode of acquiſition (CCCXLVII 2). This is pertinent, according to the opinion of CHANDÉSWARA and others.

What is received after diſplaying ſuperior learning, for which a prize had been offered, is the acquiſition of a ſcholar, and muſt not in general be divided among coheirs. Some perſon ſaying "no one can diſplay pre-eminent ſkill in this lecture *of the Véda*," a learned man replies, "if I prove ſuperior learning, what wilt thou give me?" After a prize has been offered by the propoſer *of this trial*, what is received by the learned man, on evincing ſuperior learning, is the acquiſition of a ſcholar. Such is the meaning, as apprehended by RAGHUNANDANA and JÍMÚTAVÁHANA.

So what has been received in the form of a gratuity, from a pupil, on account of inſtructions; or as a recompence from a votary, for the performance of a ſacrifice by his family prieſt; "or as a fee for anſwering a queſtion *in caſuiſtry*," (for inſtance, any queſtion being ſolved, when ſome perſon gives a reward not previouſly propoſed;) "or for aſcertaining a dubious point of law," that is, for relieving the doubts of one who thus propoſed *a reward*, "to him who removes the uncertainty in the meaning of this ordinance I will give this gold," (or it may ſignify a fee, ſuch as a ſixth part or the like, which is received for deciding a queſtion of law between two contending parties who apply for an award); "or what has been gained as a reward for diſplaying knowledge," that is, what is received from a wealthy man on conſideration of learning, being told by others, or himſelf knowing, that a gift to a learned man is laudable: *ſuch wealth is the acquiſition of ſcience.*

YAMA:—The wiſe have pronounced him worthy of gifts, who is adorned with ſcience, endowed with virtue, reſigned and gentle, ſubdues his paſſions,

preſerves

preserves strict veracity, is grateful and disinterested, is kind to cows, and protected by them, is liberal, performs due sacrifices, and belongs to the sacerdotal class:

2. A present should not be offered to the acceptance of such as neglect austerities, are ignorant of holy texts, and accept a livelihood under men of any class, however low; for a stone cannot transport a stone over *a river*.

What has been received as a reward for victory, in a contest relative to sacred literature, or any other learned controversy, is the acquisition of science. "Or for reading the *Véda* with transcendent ability;" when something is proposed to be given away, and a doubt arises to whom it shall be given, many deserving persons being proposed, what is given to one on account of veneration, for his transcendent ability in reading the *Véda*, is the acquisition of science. So what is gained by painters, goldsmiths, and the rest, through superior skill in *liberal or elegant* arts; and even that which is gained by victory over another in gaming or the like; all that is exempt from participation with others. The meaning is, that wealth gained by superior attainments in any *art or* science, belongs exclusively to him who acquired it. For the sake of elucidation, CÁTYÁYANA has delivered the precept diffusively. Such is the opinion of JÍMÚTAVÁHANA, RAGHUNANDANA, and the rest. According to their opinion, "increase of price" must be explained what is gained by the increased value of a thing above the price at which it was purchased.

"For reading the *Véda* with transcendent ability;" for excellent lecture *of it*. "Increase of price;" what is received through the skill of one man, above the suitable price, becomes his several property: such is the meaning. "A prize *which was offered* for the display of superior learning;" what is gained by the display of pre-eminent knowledge, after a prize has been offered for superior learning, in this mode, "to him who evinces the greatest knowledge in this lecture, or in this contest, a hundred

dred *Juvernas* ſhall be given." What is received as a preſent in token of reſpect, from a votary for whom a ſacrifice was formerly performed, or from a pupil formerly inſtructed, *is the acquiſition of ſcience. During a conteſt* between two learned adverſaries, if any man ſay, "I will give money to him who proves conqueror," what is gained by him who overcomes his adverſary VRĬHASPATI pronounces the acquiſition of knowledge. What is obtained by influencing the mind of the giver by ſuch a boaſt as this, "I have ſtudied this ſcience;" what is received from a pupil, of whom a preſent is aſked, (or what this pupil, ſtudying texts of the *Tantras*, gives for the worſhip of the gods, or ſimilar purpoſes; or what a ſtudent, coming to read the *Védas*, gives as a mark of reſpect to his preceptor, or as an auſpicious offering to deities;) or what is given during ſacrifice as a pious oblation to the gods, or as a mark of reſpect for the officiating prieſt; all that BHRĬGU *calls* the acquiſition of ſcience. Such is the interpretation of CHANDÉSWARA, MISRA, and others.

"What has been gained as a reward for diſplaying knowledge;" what is received by one who boaſts in a learned aſſembly, "I am ſuperior to all," even though he fail in reading the *Véda* with tranſcendent ability, is the acquiſition of ſcience; but what is received in the mode above mentioned, by thoſe who read the *Véda* with ſuperior ſkill, although they do not themſelves boaſt of their talents, muſt be alſo conſidered as the acquiſition of ſcience.

What a liberal man, any-how knowing him to be learned, gives him as a preſent intended for the learned in general, delivering it near the bank of the Ganges, on a day of purity, in the form enjoined, is not a particular ſort of wealth gained by learning, but is deſcribed by the phraſe "what is otherwiſe acquired is the joint property of the co-heirs" (CCCXLVII 5).

Accordingly, "his own" is inſerted in the expreſſion, "what has been gained *by a man* as a reward for diſplaying his own knowledge*" (CCCXLVII 3). "For victory in a learned conteſt;" what has been gained, though no reward had been previouſly propoſed, through the ſatisfaction afforded to a wealthy man by overcoming an adverſary in a diſputation. The term

 "excellent

* Copying a verſion of this text as made by Sir WILLIAM JONES, I have omitted the term in queſtion: as the ſenſe is complete without it, I judged it unneceſſary to alter his tranſlation. T.

"excellent lecture" signifies transcendent skill in reading the *Véda*, *Purànas*, or the like. Thus, a reward being promised in these words, "if any man recite this `*Sác'há* of the *Véda* in one day, I will give him a hundred pieces of money;" then the recital of one `*Sác'há* in one day is reading the *Véda* with transcendent ability.

Or this may be considered as a prize gained by proving superior learning. According to this opinion, the first hemistich of the sixth verse is read *vidyayá paṅ a pûrvacam*, by superior learning after a prize had been offered. But, according to JÍMÚTAVÁHANA and others, it is read *vidyayá dyûta pûrvacam*, by *surpassing another in* learning after a stake has been deposited. In *liberal or elegant* arts also, what is gained by the display of such peculiar qualities is the acquisition of skill in arts. The law is likewise the same in regard to the science of music and the like: the legislator declares it so in respect of the mercantile profession; "and the law is the same in regard to an increase of price" (CCCXLVII 4). What is the law respecting the military profession; is that unnoticed? To this MISRA replies; "science" signifies both arms and sacred literature: consequently it is noticed; and the acquisition of science must be also understood in the case of arms. In fact, wealth gained by valour will be mentioned in regard to the military profession: what is technically named the acquisition of science, is not exclusive thereof; but, according to CHANDÉSWARA and others, it must be affirmed to be common *to the co-heirs*.

Some explain "a fee for answering a question in casuistry," a reward received on account of the gratification afforded by the solution of a question; for instance, a man possessing immense knowledge attends an universal monarch, and discusses a question proposed by him, though he do not gain the victory *(for even in controversy a conqueror of worlds is invincible)*, yet, spreading lustre over the assembly, he receives a reward from the monarch. "A fee for ascertaining a doubtful point of law;" they explain this phrase in the sense above mentioned. Or the reward which a man receives for exhibiting extracts of books that remove the doubt, is the acquisition of science, and becomes his *exclusive property*.

The wages of mere transcribers, and generally the fee received from

from the audience for reading the *Véda*, *Purânas*, or the like, without tranſcendent ſkill in poetry, and in *explaining* the ſenſe of poems: this, and other ſimilar gains, according to CHANDÉSWARA and the reſt, are not the acquiſition of ſcience. In fact, in all caſes whatſoever wherein ſuperior ſkill is required, the wealth gained is technically denominated the acquiſition of ſcience, otherwiſe it is ſimply wealth acquired by the man himſelf. Such is the full ſenſe, according to CHANDÉSWARA and others.

## CCCXLVIII.

MENU:—What a brother has acquired by labour or ſkill, without uſing the patrimony, he ſhall not give up without his aſſent, for it was gained by his own exertion.

JÍMÚTAVÁHANA and the reſt explain the particle "and" in this text of MENU* as bearing a cauſal ſenſe. Conſequently the meaning is, becauſe it was gained by his own exertion, therefore it ſhould not be given up to his brethren without his aſſent. Hence, every kind of wealth gained through learning and the like, being acquired by the man himſelf, is, without diſtinction, exempt from partition if the patrimony have not been uſed; but if that be employed, the reſt of the brethren are ſpecially entitled to receive the ſhares which will be mentioned: and that is *true*, without exception, in *every* caſe of wealth acquired by learning. It ſhould not be argued, that, were it ſo, the particular explanation of the term, as propounded by CÁTYÁYANA, would be ſuperfluous, becauſe it would be proper to affirm ſimply that what is gained through learning is the acquiſition of ſcience. The texts of CÁTYAYANA are only intended for ample illuſtration. What then is the meaning of the phraſe, "that which is otherwiſe acquired is the joint property of coheirs?" Land or the like gained otherwiſe than in the mode mentioned, *for example*, by gratifying the donor with a preſent out of the paternal eſtate, is the joint property of all the brethren: the



* In the reading here cited that particle does not occur. In another place the text is cited with this and other variations, which, however, do not affect the ſenſe. T.

the text must be so supplied. It should not be argued, that the acquisitions of science being stated at large by CÁTYÁYANA, no participation is admitted in wealth gained by learning, although the patrimony have been used; and the text of MENU CCCXLVIII) is applicable to other cases. VYÁSA (CX) ordains the participation of brothers in wealth gained by valour, which is subject to the same law with the acquisition of science; and for this reason the same ought also to be admitted in the case of wealth acquired through learning. The analogy of acquisitions made by science and by courage must be inferred from the circumstance of VYÁSA having propounded the same rule as applicable to both (CCCXLVI). This text also must be referred to the case where the patrimony is not used. That may be actually used at the time of so acquiring the wealth; and even in the case of property acquired through science *after instructions and maintenance* received from the father, the patrimony has been used. This is virtually declared by CÁTYÁYANA (CCCXLII). On the authority of another text of the same legislator, the participation of the other brothers must be acknowledged in wealth gained by learning, which was *acquired through instructions* received from paternal uncles or the like; for the words "by their father" would be nugatory, if family were referred solely to the paternal grandfather and the rest. JÍMÚTAVÁHANA and others so expound the law.

## CCCXLIX.

CÁTYÁYANA:—Yet VRĬHASPATI has ordained, that wealth shall be partible if it was gained by learned brothers who were instructed in the family by their father, or by their paternal grandfather *or uncles;* and it is the same if the wealth was acquired by valour, *with assistance from the family-estate.*

If any person appointed by some wealthy man possessing a taste for literature, to distribute among priests a sum of money presented as a donation to many *Bráhmanas*, covetously reserve a large sum for himself, distribute the small remainder among priests, and again take back a part as a mark of respect *due to himself,*

*himſelf*, ſhould the donor, afterwards informed of the circumſtance, acquieſce in that miſappropriation, reflecting " he alſo is a *Bráhmana*, my purpoſe is therefore fulfilled ;" or if any perſon ſkilled in the ſcience of accounts, and ſomewhere employed in the ſervice of the king, have taken poſſeſſion of ſome land, and no other public officer dare to oppoſe him, and the king when informed of it does not diſapprove *his conduct* through exceſſive partiality, what is the ſettled rule of diviſion in either of theſe caſes * ?

If ſcience had been ſtudied in both families, or have been acquired by inſtructions received from the father, with a maintenance provided out of his eſtate, brothers may claim ſhares *of what is gained*, becauſe the patrimony has been uſed. If this be alleged, the anſwer is, when ſome wealthy man has attained his purpoſe through money expended by the father, and afterwards contracts a friendſhip with the ſon as with a ſtranger, the reſt of the brethren might alſo claim a ſhare of any thing given *by him* to that ſon for the ſake of enhancing friendſhip. The reſt of the brethren can only claim ſhares of that wealth, for the acquiſition of which money was expended *out of the family eſtate*, or which was acquired by learning attained through the inſtructions of the father with a maintenance provided out of the patrimony. Accordingly it is remarked by JÍMÚTAVÁHANA, that wealth acquired with the uſe *of the common ſtock employed* for that very purpoſe, is juſtly conſidered as joint-property ; but in the preſent caſe, the money has been expended for another purpoſe, and ſcience is not among the means by which this gift is obtained : brothers cannot therefore claim a ſhare. If this be alleged, the anſwer is, if the reſt of the brethren cannot participate when the uſe of the patrimony is mediately *connected with the acquiſition*, what argument proves joint-property, when ſcience, attained by inſtructions received from the father, is mediately connected with the acquiſition ? Some lawyers reply, brothers cannot claim a ſhare *of property ſo acquired*.

Is not the law thus explained : in the caſe of ſuch wealth as is technically named by CÁTYÁYANA the acquiſition of ſcience, if the patrimony have not been uſed, no ſhare ſhall be given to

 any

* The author has left his queſtion unanſwered. T.

any other brother; but if it have been ufed, a coheir lefs learned than the acquirer, or wholly ignorant, fhall be excluded from participation, but one equally or more learned fhall receive a fhare?

## CCCL.

CÁTYÁYANA:—Wealth acquired by a learned heir fhall never be divided among his ignorant coheirs; but he fhall fhare it with fuch of the parceners as are equal or fuperior to himfelf in learning.

"Ignorant;" deftitute of, or poffeffing lefs learning; for grammarians hold that the negative particles bear fix fenfes; fimilitude, privation, diverfity, paucity, want of excellence, and contrariety *. "Learned;" adorned by fcience. Wealth acquired by him *fhall* never *be divided among ignorant coheirs*, whether joint property have or have not been ufed. "Equal or fuperior to himfelf;" the word learning, employed ambiguoufly, is referred to both terms: the meaning therefore is, fuch of the parceners as are equal, and fuch as are fuperior in learning. Thus JÍMÚTAVÁHANA and RAGHUNANDANA. But others explain the phrafe by *regular* appofition: fuperiority in learning is fignified by the fingle term "fuperior;" as in the phrafe DÉVADATTA is the moft handfome, and YAJNYADATTA is next, the laft term fignifies handfome in the next degree.

*The law fhould* not *be* fo *explained as advanced in the queftion propofed;* for, NÁREDA declaring that wealth acquired without fupplies from the joint ftock fhall not be fhared with ignorant coheirs, it thence appears, that, if fupplies were furnifhed from the joint ftock, the acquifition of fcience muft be fhared even with unlearned coheirs.

## CCCLI.

NÁREDA:—A learned heir fhall not give a fhare out of his own *acquired* wealth to an unlearned coheir without

* A citation from the Metrical Rules of BHARTRĬHERI.

without his aſſent, unleſs it were gained by him receiving ſupplies out of the patrimony.

## CCCLII.

YÁJNYAWALCYA :—Any other property which a man has himſelf acquired without uſing the patrimony, and any thing given by a friend, or received on account of marriage, ſhall not be ſhared with coheirs.

2. He who by his own pains, *and at his own charge*, recovers *or repairs* what has deſcended from his anceſtors, and has been long taken away, *or nearly deſtroyed*, ſhall not bring it into partition with coheirs, *unleſs it be land*, nor what he has *thus* gained by his learning.

" Any other property ;" other than a thing given by a friend or the like. The acquiſition of ſcience being alſo ſuggeſted by the firſt text, the expreſſion " nor what he has gained by his learning " is ſuperfluous. If this be alleged, the anſwer is, No ; for it is intended to exclude unlearned coheirs (even though joint property have been uſed,) from partition in that which is different from the ſeveral property deſcribed in the firſt verſe of CÁTYÁYANA (CCCXLVII 1), and which is acquired through learning attained whilſt a maintenance was provided by the father. There is no difficulty in affirming this to be the opinion of 'SÚLAPÁNI. In like manner, if any thing have been received from a friend, it is only exempt from participation when the joint ſtock has not been employed *to obtain the gift*. " Any thing received from a friend " is a mere inſtance of a general meaning.

## CCCLIII.

NÁREDA :—Three ſorts of wealth are in general not ſubject to partition; what is gained by valour,

 what

what is given by the kinſmen of a wife, and what is acquired by learning; and alſo any thing that has been received by the favour of a father, *or other friend.*

2. And this law is alſo obſerved in the caſe of him to whom any thing has been given by his mother, through affection, out of her own ſeveral property; for, as a father, ſo has a mother power *over her own* *.

Reſerving what was given by the kinſmen of a wife, (or wealth received at the time of accepting a wife,) and what was gained by valour, or acquired by learning, let him diſtribute any other property: the text ſhould be ſo ſupplied. The reaſon is mentioned, becauſe theſe three ſorts of wealth are not ſubject to diſtribution. What has been received by the favour of a father, is alſo exempt from partition.

## CCCLIV.

VYÁSA:—What is given by a paternal grandfather, or by a father, as a token of affection, belongs to him who receives it; neither that, nor what is given by a mother, ſhall be claimed by coheirs.

2. What a man gains by his own ſtrength, without reliance on the patrimony, he ſhall not give up to the coheirs, nor what he acquires by learning.

Joint property may have been uſed even for the acquiſition of wealth received in donation. For example, a man obtains a gift by gratifying the donor with preſents on his own part. Accordingly it is thus recorded, " In the *Cali* age, a follower, or one admitted to fellowſhip, obtains preſents."

According to JÍMÚTAVÁHANA, and the reſt, there is no diſtinction. The author of the *Pracáſa,* JITÉNDRIYA, and others,

* The ſecond verſe was cited a few pages lower; I inſert it here to avoid the neceſſity of repeating the firſt verſe. T.

others, hold the very ſame opinion. But MISRA, CHANDÉSWARA and the reſt affirm, that ſome diſtinction appears to be intended by VYÁSA, who declares that no ſhare of wealth acquired without uſing the patrimony ſhall belong to him who did not contribute to the acquiſition; and afterwards adds, "nor what is gained by learning" (CCCLIV 2): and the diſtinction ſeems to be this; another brother ſhall have no ſhare of wealth acquired by *learning*, even though ſupplies have been furniſhed out of the common ſtock.

It ſhould not be argued, that, in other caſes, when joint property has not been uſed, no other ſhall participate *in the wealth gained;* nor in *that which is called* the acquiſition of ſcience, as deſcribed by CÁTYÁYANA (CCCXLVII): but, wealth gained by ſcience being again mentioned, the reſt of the brethren may claim ſhares of that which is acquired by learning in modes other than thoſe deſcribed by CÁTYÁYANA, even though ſupplies have not been received out of the joint property. No ſuch meaning is ſuggeſted by the texts of VYÁSA and YÁJNYAWALCYA: for you muſt thus interpret the text of VYÁSA (CCCLIV 2); what is gained without reliance on the joint ſtock, the acquirer ſhall not give up to the coheirs; he ſhall not give up to them that wealth, technically named by CÁTYÁYANA the acquiſition of ſcience, *which is gained* without uſing the joint ſtock. The ſame meaning alſo reſults from the text of YÁJNYAWALCYA, connecting the laſt phraſe with the preceding terms "acquired without uſing the patrimony" (CCCLII 1): thus alſo it does not appear that he ſhall not give up *to the heirs* wealth which is acquired by learning, but which is not technically called the acquiſition of ſcience. Nor ſhould it be argued, that, in like manner as it appears from the precept "five creatures with five claws may be eaten," that man and other five-toed animals, excepting *only* the hare, porcupine, tortoiſe, rhinoceros, and crocodile* of the Ganges, are forbidden

* With deference I wiſh to correct the tranſlation of a verſe of MENU relating to this ſubject (Ch. v. V. 18). In his interlineary verſion, Sir WILLIAM JONES had tranſlated *c'ha'dga*, rhinoceros, which is the undoubted meaning of the word. I can aſſign no reaſon for his ſubſtituting the *Sanſcrit* word *gandaca*, which is another name for the rhinoceros. In the ſame verſion, Sir WILLIAM JONES tranſlated *go'd'há*, iguana; I am led to underſtand by that term the *go'dhicá* or lacerta

bidden food; ſo wealth acquired by learning in other modes than what is technically denominated the acquiſition of ſcience, appears not to be exempt from participation. "Five" being ſpecified that may be ſuggeſted in reſpect of five-toed animals; but in the preſent inſtance, ſince the term is not reſtricted by the epithet "technically ſo called," no ſuch meaning is ſuggeſted: for the ſenſe of the precept is "five creatures with five claws, and no other five-toed animals, may be eaten;" but in the preſent inſtance, is not the anſwer *furniſhed by the text*, "he ſhall not give up what is acquired by learning? Nor ſhould it be argued, that what is ſtated by VYÁSA in the firſt hemiſtich (CCCLIV), is elucidated by the concluding terms of the ſame text "nor what he acquires by learning," and that the text of YÁJNYAWALCYA muſt be expounded in a ſimilar mode. The words "wealth acquired by ſcience," which occur in another text of VYÁSA (CCCXLVI), would be unmeaning. But at preſent the text cited (CCCXLVI) is conſidered as relating to the acquiſition of ſcience technically ſo denominated by CÁTYÁYANA (CCCXLVII 1 and 2, &c.); the words "nor what he acquires by learning" (CCCLIV) merely illuſtrate the preceding part of the ſame text: there is not conſequently any vain repetition.

After declaring the acquiſition of ſcience and of valour exempt from partition (CCCXLVI), a diſtinction is expounded in another text (CCCLIV); the expreſſion "what he gains by his own ſtrength" being there employed, it relates to the acquiſition of valour; by a text formerly cited (CX), partition is ordained by VYÁSA when no ſpecial ground of exemption exiſts: hence there is nothing ſuperfluous; for, an exception oppoſed to a general maxim, and a general precept oppoſed to a ſpecial rule, cannot be deemed ſuperfluous. It ſhould not be argued, that, were it ſo, the technical ſenſe of the term "acquiſition of ſcience" would be vainly propounded by CATYÁYANA (CCCXLVII 2, &c). The author of the *Pracáſa* ſays, the texts of CÁTYÁYANA elucidate thoſe acquiſitions of ſcience in which the patrimony is not uſed:

certa gangetica, named *go'hi* and *garíál* in the vulgar dialects of Bengal; the iguana is in *Sanſcrit* called *gaud'héra*, *gaud'hara*, *gaud'héya*, and *gód'hicátmaja*, which literally ſignifies offspring of the lacerta gangetica. May I add, that this ſpecies of alligator has been ill deſcribed by European naturaliſts; and, through a ſtrange miſtake, has been called the open-bellied crocodile. T.

ufed : or, *it might be replied*, CÁTYÁYANA has delivered a full explanation of the term " acquifition of fcience."

If this be alleged, the anfwer is, a diftinction being taken by texts of law (CCCLX) in regard to the acquifition of valour, it appears that a diftinction does exift in regard to fuch acquifition. Thefe texts (CCCLX) do not relate to wealth fo gained by valour, when paternal property has not been ufed ; for, in this inftance alfo, the riding horfe, weapons or the like, may have belonged to the father. Nor can it be inferred, that, this *acquifition* being fpecially mentioned, any other wealth gained by valour muft be acquired with aid from the patrimony. It is poffible that an indigent fon may difplay his courage, having received a horfe, arms, and the like, from fome perfon pleafed with his eloquence, humility, and fo forth. Nor is it merely an ample explanation of the term. It would be improper to omit the obvious *gain of military* pay, and only ftate wealth acquired through favour in confequence of an arduous achievement. The diftinction does not confift in this, that foldiers, trained to arms in their own families, fhall give a fhare of fuch gains to other brothers. Were it fo, it would be inconfiftent with reafon; for, wealth gained by valour generally (that is, military pay), if acquired without fupplies out of the patrimony by foldiers trained to arms in their own families, is not fubject to partition: that the reward of a gallant achievement fhould in fimilar circumftances be partible among coheirs, would be inconfiftent with reafon. Nor is it ordained that a fhare fhall be given to a learned coheir *in all cafes* without exception ; for that would be inconfiftent with reafon. Confequently, fince it is fettled that what is technically called the acquifition of courage, fhall not be partible even though joint property have been ufed; but the foldier's pay, and any other wealth gained by valour, is partible, if the joint property have been ufed, but not otherwife ; the fame rule of decifion fhould be alfo inferred in regard to the acquifition of fcience and the like.

Thus partition of wealth gained by valour, which is ordained by a text formerly cited (CX), relates to the hire *of the foldier*, not to the reward of a gallant achievement ; another law of VYÁSA (CCCXLVI) relates to that which is technically called the acquifition of learning, or of valour ; the text of VYÁSA laft

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cited (CCCLIV), mentioning "by his own ſtrength," as well as the law of MENU (CCCXLVIII), which expreſſes "by his own valour," alludes to that which is acquired by agriculture or the like; the concluding part of the text, "nor what he acquires by learning" (CCCLIV) relates to wealth gained by a common recital of ſacred poems and the like; and, through the connective particle, it alludes to the wages of valour: the phraſe in the text of MENU (CCCXLVIII), "and what was gained by his own exertion*," comprehends every other acquiſition.

Is not this inconſiſtent with the text of NÁREDA (CCCLI)? for it is there ſuggeſted, that a learned man muſt give to an unlearned coheir a ſhare of wealth acquired through ſcience, which was attained while ſupplies were received by him out of the patrimony? To this CHÁNDÉSWARA replies, the intention is this: when a parcener, who attained ſcience, receiving food, apparel, and other ſupplies out of the joint property only, earns wealth by his learning without reliance on the common ſtock for ſupplies, then no ſhare ſhall be given to the unlearned coheir: if he do rely on the joint ſtock for his maintenance, what is ſo acquired through ſcience muſt be ſhared even with unlearned coheirs: but if the joint ſtock were not uſed *by him* at the time of his acquiring knowledge, then no part of his gains ſhall be given up to any ignorant coheir, even though he receive ſupplies from the joint ſtock during the time of acquiſition, but he ſhall give a ſhare of that wealth to the learned coheir alone; ſince VYÁSA, having ordained the ſeveralty of wealth gained without the uſe of the patrimony, ſeparately declares the acquiſition of ſcience exempt from *general* partition. Accordingly the indiviſibility of wealth acquired by learning, which will be again mentioned, muſt be referred to the caſe when ſupplies were received from the joint ſtock at the time of acquiring wealth through that ſcience, which had been attained with a maintenance provided out of ſeveral property. *Thus far* CHANDÉSWARA.

This may be here briefly ſtated as *reſolving itſelf into* four caſes. 1ſt, The acquiſition of wealth by one inſtructed in ſcience after a maintenance provided out of the paternal eſtate, but without uſing the common ſtock *during the exertion for gain*. 2d, The ſame caſe, but expending joint property during the acquiſition.

3d,

* In compliance with the former gloſs, it has been tranſlated in a cauſal ſenſe. T.

3d, The gain of wealth by one who attained ſcience without ſupplies from the common eſtate, but who uſes the joint ſtock *during the exertion*. 4th, The ſame caſe, but without expending joint property *during the acquiſition*.

1. In the firſt caſe, it is pronounced his own acquired property, not to be ſurrendered to ignorant coheirs, under the texts of GÓTAMA (CCCLV), and CÁTYÁYANA (CCCL); whence CHANDÉSWARA concludes by ſaying, it ſhall not be given up to an unlearned coheir.

## CCCLV.

GÓTAMA:—A learned man ſhall not give a ſhare *of his own acquired property* to an ignorant coheir againſt his own will.

Does it not follow, that the text of NÁREDA (CCCLI) relates not to ſuch wealth as is technically named the acquiſition of ſcience? for the condition, "unleſs it were gained by him receiving ſupplies out of the patrimony," would not be pertinent: and it is ſubſequently remarked by CHANDÉSWARA, in his gloſs on the text of VYÁSA (CX), that it muſt be conſidered as relating to wealth acquired by learning, valour, and the like, *but* diſtinct from what is technically denominated the earnings of ſcience or of courage. The text (CCCLI) muſt therefore relate to the acquiſition of wealth through knowledge attained with a maintenance provided out of the joint ſtock: the precept of CÁTYÁYANA (CCCL) muſt of courſe relate to the ſame ſubject, not to the acquiſition of ſcience technically ſo called; ſince it bears the ſame import with the law propounded by NÁREDA. Or the rule of deciſion in both caſes is eſtabliſhed by the texts of two Sages. It ſhould not be argued, that the precept delivered by NAREDA may alſo relate to the acquiſition of ſcience technically ſo called, becauſe that is the obvious interpretation. The technical denomination would be ſuperfluous; and the expreſſion "nor what he has thus gained by his learning" (CCCLII 2) would be unmeaning. At preſent that denomination ſerves to exclude ignorant coheirs from participation in wealth named the acquiſition of ſcience, even though ſupplies have been received out

out of the joint property. Nor ſhould it be argued, on the authority of the text of CÁTYÁYANA, that the acquirer muſt give a learned coheir *a ſhare of* ſuch wealth which he has gained without uſing the general ſtock. It would be inconſiſtent with common ſenſe that it ſhould be joint property, when no uſe has been made of the joint funds. By excluding the ignorant coheirs from participation when wealth gained by learning is diſtributed, and by the particle " but," *which occurs in the text*, it ſuggeſts the law, that learned coheirs ſhall participate; and the diſtribution, previouſly hinted, is contemplated *in the precept*. Hence diſtribution is not ordained by the text in the other ſuppoſed caſe.

But other lawyers conſider as accurate the reading approved by CHANDEŚWARA and JÍMÚTAVÁHANA in the text of NÁREDA; *vaidyó vaidyáya*, a learned heir *ſhall not give a ſhare* to a learned coheir, inſtead of *vaidyó vidyáya*, *he ſhall not give it* to an unlearned coheir; *according to them*, the ſign of the privative *A* occurs in ſome books through the careleſſneſs of the tranſcriber: conſequently the meaning is, a learned heir ſhall not bring into partition, with a learned coheir, wealth technically named the acquiſition of ſcience, and which he has gained without uſing the patrimony. CÁTYÁYANA propounds a diſtinction in reſpect of learned coheirs (CCCL). On the texts of theſe two Sages, wealth gained through ſcience attained with ſupplies out of the patrimony, ſhall be ſhared with ſuch of the parceners as are equal or ſuperior in learning. Such is the reſult.

The remark of CHANDÉSWARA may be accurately applied *to theſe texts*. Thus, to explain their ſenſe, he firſt notices the rule reſpecting gains not technically named the acquiſition of ſcience; " when a parcener, who acquired learning, receiving food, apparel, and other ſupplies out of the joint property only, earns wealth by his knowledge, &c:" and this is intended to render the explanation perſpicuous, by ſtating the whole of the various rules concerning wealth acquired by learning: the expreſſion, " receiving food, apparel, and other ſupplies out of the joint property only," is merely an inſtance which intends every ſort of wealth gained by learning, but not technically named the acquiſition of ſcience: " unlearned coheir," at the cloſe of that ſentence, is alſo a mere inſtance, intending generally any perſon who did not contribute to the acquiſition. The commentator proceeds

proceeds to explain the object of both texts; "but if the joint ſtock were not uſed by him at the time of his acquiring knowledge, then no part of his gains ſhall be given up to any coheir, &c.:" to remove the doubt whether a learned man be alſo excluded, the commentator adds, "but it belongs to the learned alone:" that is, taking the ſixth caſe in the dative ſenſe, "the acquirer ſhall give a ſhare of that wealth to the learned coheir alone;" the ſentence muſt be ſo ſupplied. Conſequently the acquiſition of ſcience, as defined by CÁTYÁYANA (CCCXLVII 2, &c.), ſhall not be ſhared with any coheir whomſoever, even though food and apparel were received out of the joint property during the attainment of knowledge, provided the common ſtock were not uſed during the acquiſition; in like manner as wealth gained by agriculture and the like, is *in ſimilar circumſtances* exempt from partition. If the joint ſtock be only uſed during the acquiſition of the wealth, it ſhall be ſhared with the learned coheir alone, under the texts of NÁREDA and others (CCCLI): if the joint property be ſo uſed in both periods, the gain ſhall be ſhared with all the coheirs; for it falls under the text which allots a double ſhare to the parcener who made the acquiſition (CX), ſince it is not ſuch property as is technically named the earnings of ſcience. But wealth otherwiſe acquired through learning, muſt be ſhared with all the parceners, if the joint ſtock have been uſed during the acquiſition; but with none of them if it were not ſo uſed, for no text ordains *their participation. The law may be* thus briefly *expounded.* It is not cuſtomary, nor reaſonable, nor directed by the letter of the law, that a ſhare ſhould be given to the learned coheirs *only*, when the wealth was acquired in the modes deſcribed by CÁTYÁYANA (CCCXLVII 2, &c.), but the joint property had been uſed during the attainment of ſcience; for it appears from the text (CCCXLVII 1), that any other wealth *(not acquired by learning after inſtructions received from a ſtranger and a maintenance provided by one of a different family)* is not the acquiſition of ſcience; it does not thence appear that ſhares ſhall *only* be given to learned coheirs. As for what is argued, that, ſince nothing is expreſsly mentioned in the text which ordains the participation of the learned, it muſt relate to the *uſe made of* joint property; that ſhould not be conſidered as equitable, for it can have been no where mentioned, that *the rule* depends on the ſupplies re-

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ceived out of the joint ſtock during the attainment of the means of *acquiring wealth*. Thus do theſe lawyers expound the law.

2. In the ſecond caſe, all the brethren ſhall have their due ſhares, diſtributed in the mode which will be mentioned; for the text of VYA'SA (CX) implies the uſe of joint property during the acquiſition; and a ſimilar *meaning is deduced* from a precept delivered by NA'REDA (CCCLI). This is actually declared by CHANDÉSWARA; "if he do rely on the joint ſtock for ſupplies, what is ſo acquired muſt be ſhared even with unlearned coheirs."

3. In the third caſe, the gain ſhall be ſhared with a learned coheir; as implied in the text of GÓTAMA (CCCLV), and declared by CÁTYÁYANA (CCCL). This is expreſsly ſaid by CHANDÉSWARA; "he ſhall give a ſhare of that property to a learned coheir:" and it is reaſonable; for, if a learned brother may claim a ſhare becauſe the joint property was employed during the attainment of the ſcience, why may he not do ſo if it be uſed during the acquiſition of the wealth?

4. In the fourth caſe, another brother, even though ſuperior in learning, is excluded from participation; for, the text of CÁTYÁYANA (CCCL) being referible to a caſe where joint property is uſed, there is no argument by which the general ſenſe of the text of MENU (CCCXLVIII) can be reſtricted. Again; in the law propounded by YÁJNYAWALCYA (CCCLII), the words "without uſing the patrimony" are not connected with the ſubſequent part of the text, "any thing given by a friend, &c.;" but, in the following verſe (CCCLII 2), "without uſing the patrimony" muſt be ſupplied, from its coincidence with *laws delivered by* other Sages. Or the words may be connected, *ſay ſome lawyers;* and knowledge attained by inſtruction in another family muſt be conſidered as the fourth caſe; it is ſimilar to *that of ſcience attained with* a maintenance provided by one of a different family. HELÁYUDHA delivers this opinion. MISRA holds, that what is acquired, even with reliance on the joint property, by one who was inſtructed in arms or in ſcience by a ſtranger, and who ſubſiſted on a maintenance provided by an indifferent perſon, and whoſe family was not ſupported by the coheirs during the attainment of ſcience, is the acquiſition of knowledge, and exempt from partition: but the text of NÁREDA (CCCLI) relates

lates to the case where the joint property was used for the attainment of science, as well as for the acquisition of wealth. The *Párijáta* and others in every instance connect the words, "without using the patrimony," with the attainment of knowledge. They support the opinion of JÍMÚTAVÁHANA and the rest; the text of CÁTYÁYANA (CCCL), who is the propounder of the technical term "acquisition of science," is pertinent, as it relates to that subject; but the preceding text (CCCXLVII 2) is not *intended as* an explanation of the technical term: the law propounded by NÁREDA relates to what is named the acquisition of science, and also to what is not so denominated; it has the same import with the precept delivered by CÁTYÁYANA: this mode of interpretation is simple. But, in the exposition of CHANDÉSWARA and the rest, there is nothing incongruous; and the technical denomination, as explained *(according to their opinion)* in the texts cited (CCCXLVII 2, &c.), may have its use. Such is the difference.

'The mode of interpretation is simple:' thus, what is gained without using the patrimony is exempt from partition; what is acquired with the use of it shall be divided; what is technically named the acquisition of science, being gained without employing the common stock, shall be shared with no one: such are the three rules according to JÍMÚTAVÁHANA and the rest. Any other wealth, except that which is named the acquisition of knowledge, being gained with supplies provided out of the joint-property, shall be shared with all the coheirs; what is so named shall be shared with a learned coheir, if the patrimony have been employed either in acquiring the science or the wealth; such property, gained without using the patrimony, shall be shared with no one: such are the three rules according to CHANDÉSWARA and the rest. Here the insertion of a condition in the first rule, 'except that which is technically named the acquisition of science,' and the condition annexed to the third, 'property so named,' are burdensome.

'There is nothing incongruous in the exposition of CHANDÉSWARA:' thus all the learned coheirs have shares of wealth, gained even without using the joint-property, by the arduous achievement of one who attained knowledge, receiving food and apparel, and other supplies, out of the joint-stock: *but* no one

has a ſhare of wealth acquired in agriculture or the like, (with a plough and other implements received from a ſtranger,) by the labour of one whoſe body had been nurtured with much food provided out of the common ſtock: a diſparagement to ſcience would follow as a conſequence; *which is* an abſurdity ariſing on the expoſition of JÍMÚTAVÁHANA and the reſt, *but avoided by* CHANDÉSWARA. If it be argued, that no other brother ſhall have a ſhare of wealth acquired without uſing the joint-property, even by one who attained ſcience after a maintenance provided out of the common ſtock, then the ſeparate mention of "what is acquired by learning," in the texts of VYÁSA and others (CCCLIV), would be unmeaning.

If any man give a ſuitable reward to one who was unwilling to teach gratuitouſly, what is the rule in that caſe? (The payment of ſuch a recompenſe is legal, as appears from the following text):

*Smriti*—Whoever gives a ſubſiſtence to a teacher, and cauſes him to inſtruct twice-born men, what has he not given, *which was requiſite to the attainment of his purpoſe*, deſirous as he was of *fulfilling his* duty, *of obtaining the gratification of his* wiſhes, and *of acquiring* riches*?

To the queſtion propoſed the anſwer is: according to JÍMÚTAVÁHANA, it is the acquiſition of knowledge, for it is received on account of ſcience. Hence the rule of deciſion muſt be drawn from a conſideration of *the fund, whence* food, apparel, and other ſupplies *were provided* during the period of receiving inſtructions *in the ſcience, which is afterwards taught*. But, according to CHANDÉSWARA and the reſt, it is not ſuch wealth as is technically named the earnings of ſcience. Hence, if the joint-property were uſed during the acquiſition of the wealth, all the coheirs ſhall have ſhares; if it were not uſed, but food and apparel were ſupplied out of the joint-ſtock *during the period of ſtudy*, a ſhare muſt be given to a learned, not to an unlearned coheir; if a maintenance were not received out of the common ſtock *during ſtudy*,

* Which are the three rewards of gift and of other meritorious acts. T.

*ſtudy*, nor any uſe made of the joint-property *during the acquiſition*, no ſhare ſhall be given to any perſon. This brief explanation may ſuffice.

If food and veſture have been received for ſome time out of the common ſtock, and afterwards obtained in alms or the like, or if the ſcience were ſtudied for ſome time in the ſtudent's own family, and afterwards in a different one, what is the rule of deciſion in theſe caſes? Wealth acquired by that ſcience, during the attainment of which food and veſture were ſupplied out of the common ſtock, or which was learned in the family, is not technically named the acquiſition of knowledge. If the ſame ſcience be of both deſcriptions *(partly learned in one period, and partly in the other)*, what is the rule of deciſion in regard to wealth earned by that knowledge? *It muſt be ſettled* by a nice diſtinction; the teacher, and the maintenance during ſtudy of that branch of a ſingle ſcience, ſuch as aſtronomy or the like, by which the wealth was gained, muſt be inquired. So likewiſe in philoſophy and other ſciences, the ſtudy of that controverſy, reſpecting which a queſtion was propoſed, muſt be aſcertained. But if grammar, which is univerſally requiſite, have been learned in the ſtudent's own family, what is the rule? To this it is anſwered, although grammar, which is neceſſary to the ſcience that becomes the means of acquiring wealth, have been learned in his own family, ſtill, if that particular ſcience through which it is gained be not there learned, it is unexceptionably called "the acquiſition of knowledge." If a minute diſtinction cannot be made, the matter muſt be adjuſted in the proportion which may be ſettled by an intelligent *arbitrator*. For inſtance, if the ſcience, which becomes the means of earning money, be half learned in the man's own family, then half the wealth acquired ſhould be diſtributed among the coheirs, in ſuch ſhares as are ordained by the law.

The diſtribution ordained by law aſſigns two ſhares to him who made the acquiſition, and one to each of thoſe who did not contribute to it; for the text of Vyása *directs ſuch a diſtribution* (CX). "Carriage and weapons," in the precepts cited, are mere inſtances of property in general. "Supplies from the common eſtate" alludes directly to the horſe, or carriage, or the like; and indirectly, by the authority of the text, to ſcience as the

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means of acquiſition. The ſhare of wealth gained by knowledge, which is ordained by CÁTYAYANA and others to be given to a learned coheir, does not intend an equal ſhare, for the import is the ſame with this precept (CX).

## CCCLVI.

VASISHT'HA:—He among them who ſingly acquires wealth, ſhall take a double ſhare of it.

This text alſo relates to wealth gained after ſupplies received out of the common eſtate; for it is declared, that the acquirer ſhall take the whole if he uſe not the joint-property (CCCXLVIII). Since the "patrimony" is mentioned in the texts of MENU and others, this *double ſhare* muſt be underſtood, when the acquiſition is effected by the uſe of any property which belonged to the father, not by the ſimple uſe of property *in general*. In like manner, if one brother acquire wealth in concert with his father, he ought to receive a double ſhare. Accordingly MENU ordains equal partition of wealth gained by the co-operation of all the brethren (XXIX). But, in this caſe, the father is a thing common to all his children; for he is the ſire of them all. Conſequently, if the father of five ſons cauſed fifty *ſuvernas* to be earned by one of his children, in that caſe, after his death, the ſum ſhall be divided into ſix ſhares, and the acquirer ſhall take a double allotment, conſiſting of a trifle more than ſixteen *ſuvernas* and a half; the reſt ſhall take one ſhare each, amounting to little more than eight *ſuvernas*.

In the caſe of an acquiſition made by the ſon with the cooperation of his father, ſince both contributed thereto, ought not the ſum to be divided into two parts, out of which one *(namely the acquirer,)* ſhould take one part; and the reſidue being divided into five parts *after the death of the father*, all the brothers ſhould receive one ſhare each? It ſhould not be objected, that, were it ſo, the diſtribution ought to be ſimilar even in the caſe of an acquiſition made by the uſe of joint-property; one ſhare ſhould be allotted in conſideration of the property uſed, and be ſubdivided into five parts, and one undivided ſhare ſhould belong to the acquirer. Since the common eſtate has not, like a father, power

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to acquire wealth, it is regular to make the diſtribution as ordained by the precepts of legiſlators. Nor ſhould it be objected, that, ſince RAGHUNANDANA directs the allotment of two ſhares, if one acquire wealth by uſing the horſe of another or the like, equal partition is proper, although the horſe or other common property cannot of its own accord effect the acquiſition.—Whatever may have been the notion of RAGHUNANDANA, the acquirer is alſo entitled to a double ſhare, by the precept of the legiſlator, if he uſe a horſe belonging in common to the parceners, or any other joint property. It ſhould not be objected, that, in the caſe of an acquiſition made in concert with the father, he is a thing common to all his children. On the contrary, in the caſe of a gain made by the *common exertion of* father and ſon, ſince the latter is alone ſubordinate, he ought to be conſidered as the inſtrument of the acquiſition made by the father. Does not this appear an unjuſt diſparity? *for*, if the father be acknowledged ſubordinate in the inſtance of a gain made by both, *(through the active exertion of the ſon under his father's directions,)* the ſon, who makes the acquiſition, ſhall receive ſixteen *ſuvernas* in the caſe above mentioned*: but if their equality be admitted, the acquirer has thirty *ſuvernas after the death of his father*, and the reſt five each. If this be propoſed, the anſwer is, what difficulty *can follow from the admiſſion?*

To this ſome reply, the deciſion ſhould be regulated according to the ſuperior influence of the acquirer, or of the means of acquiſition. Thus, if cavalry alone be required, and hire be only obtained from the king, or other employer, on producing a horſe, the beaſt is chiefly conſidered; if making war be alſo required, both are equal; but if the ſoldier undertake warlike ſervice even without a horſe, and the beaſt be merely uſed as a conveyance, it is leſs conſidered. So, if the ſon alone practiſe the means of acquiſition, and employ his father *in a ſubordinate office*, then the ſon ſhall have two ſhares, becauſe he chiefly contributes to the gain; if the father chiefly promote it, or both equally, then ſince both are acquirers of the wealth, the ſon ſhall have half; even though the father principally contribute to the gain, the ſon may claim a ſhare as the inſtrument of the acquiſition, which ought to be rewarded with half the gain, and for which the legiſlator



* See the preceding paragraph. T.

giſlator directs the allotment of a double ſhare to the brother who acquires wealth by the uſe of the common ſtock. This is fully declared. In fact, participation is only proper when the joint-ſtock has been uſed. A ſeeming diſparity is thus obviated, namely the allotment of a double ſhare only to one who practiſed agriculture, taking a rope for his plough out of the common ſtock, but employing his own ſeveral cattle and implements, or to one who begged alms after travelling to a foreign country with a pair of ſhoes taken from the common ſtock, at the ſame time that a double ſhare is likewiſe allotted to one who practiſes agriculture with the whole of his implements ſupplied out of the common ſtock, or who goes to a foreign country and acquires wealth by *the uſe of* carriages, ſlaves, or various other means furniſhed out of the joint-property: for this ſeeming difficulty is reconciled by a proportionate allotment. Accordingly JÍMÚTAVÁHANA obſerves, this alone is hereby proved, that one who has uſed joint-property, muſt make a diſtribution in proportion to that part, whether little or much, which has been uſed by him. Thus do theſe lawyers expound the law.

In like manner, if any thing be given by a pupil jointly inſtructed, or by a votary, or any other perſon ſo connected with all the parceners, in conſideration of that very relation, the rule of deciſion is the ſame; yet if it were given by perſons whoſe acquaintance originated in that relation, but in conſideration of the good qualities of the donee, it ſhould not be diſtributed among all the coheirs, although the acquaintance aroſe from ſuch a connexion, becauſe this was not the motive of the gift.

Is not the *univerſal* allotment of two ſhares inconſiſtent with reaſon? for if one of five brothers gain thirty *ſuvernas* with ſupplies out of the common eſtate, he gives twenty to his brothers, and reſerves ten for himſelf; in effect he receives five *ſuvernas* as the reward of the acquiſition: another man of no more than equal merit, who has two brothers, gains thirty *ſuvernas* with the ſame labour and with equal uſe of joint-property; he gives fifteen to his two brothers, and reſerves an equal ſum for himſelf; in a word, he takes ſeven *ſuvernas* and a half as a reward of the acquiſition. Thus one who has two brothers may receive more than one who has four, even though he be inferior in ability; which is an unjuſt diſparity: the greater number of brothers is

no

no fault on the part of the acquirer, wherefore he ſhould ſuſtain a loſs. It ſhould not be anſwered, that the text of VYÁSA muſt be referred to the caſe of him, who has two brothers, and a proportionate diſtribution muſt be made after the ſame mode in the inſtance of one who has three or more. The plural number, not the dual, is employed in the text; "the other parceners muſt have equal ſhares" (CX 2). Nor ſhould it be argued, that an indeterminate ſenſe of the plural number muſt be neceſſarily inferred from the object in contemplation. By ſuch indeterminate uſe, it is ſuggeſted, that the literal ſenſe is not indiſpenſable, not that the text is inapplicable to the caſe of many brothers; for that no-where occurs except in the inſtance of the word *dára* (wife) and other terms, *maſculine or plural in form, but feminine or ſingular in ſenſe*. Nor ſhould it be argued, that the diſtribution muſt be made, in favour of the acquirer, in that form which is obſerved when the whole is divided into two ſhares; and conſequently the virtual ſenſe is, that half ſhall be given to the acquirer, and thus nothing incongruous occurs in any inſtance. No *reſpected* author has ſaid ſo.

If this argument be propoſed, ſome reply, when the diſtribution is regulated by the greater or leſs degree of labour, it muſt be acknowledged, that the acquirer does in ſome inſtances receive half the gain: if the text be accurate when referred to this caſe, the ſilence of authors is nothing to the purpoſe.

But, in fact, this does relate to partition of heritage. If one among aſſociates in commercial adventure, who are related to each other, as ſons of ſiſters, take a horſe appertaining to the partners, and acquire wealth *in a ſeparate occupation*, no legiſlator has ordained that the acquirer ſhall have a double ſhare *only*: the hire of the horſe, or the like, not a ſhare of the gain, ſhall be received *by the partners as owners thereof*; for it is incongruous that a ſhare ſhould be allotted to an irrational animal. A *ſpecific* portion may nevertheleſs be received by way of hire under a ſpecial agreement. Again; brothers who did not contribute to the gain receive ſhares, becauſe the acquiſition was made by their own father and brother, with whom they are coparceners, and by *the uſe of* a horſe appertaining to them in common: accordingly, when brothers are numerous *, the multitude of them is juſt ſuch

 a fault,

* This ironical argument alludes to an objection ſtated above. T.

a fault, as it is in a father to have many ſons when he himſelf makes a partition *of hereditary wealth*. Hence alſo JIMÚTAVÁHANA has obviated the doubts which might have been entertained, whether parceners, who did not contribute to the acquiſition, ſhall have ſhares of the wealth, though gained without the uſe of the joint property, excepting only the earnings of valour and the like.

If there be any argument for the participation of thoſe who did not contribute to the acquiſition, when any thing is gained by an undivided brother, even without the uſe of joint property, why ſhould it be ſet aſide? It ſhould not be argued, that their participation is denied by the texts of MENU and others (CCCXLVIII). Since the precept of MENU expreſſes "by labour and ſkill," and that of VYÁSA "by his own valour or the like" (CX), and the terms employed in the text of YÁJNYAWALCYA "property which a man has himſelf acquired" (CCCLII), may be explained as relating to an acquiſition ariſing from his own ſkill and exertion, there is no difficulty in affirming, that coheirs are excluded from participation in that only which a man earned by the labour of his own body.

When this queſtion is propoſed, it is anſwered in the negative; for there is no proof whereby the inference can be eſtabliſhed. It may be eaſily affirmed, that the right of participation extends only to that which has been acquired through the means of property appertaining in common to the brethren; but the acquiſition being the act of an undivided brother, is not alone a ſufficient cauſe for veſting property in the reſt: the cauſe is the aid received from the joint ſtock.

Were it ſo, might not an elder ſon, who maintains his infant brothers, after the death of their father, out of his own acquired wealth, claim reimburſement from them when arrived at years of diſcretion? No; for an elder ſon is as ſtrictly commanded by the law (XII, &c.) to ſupport his infant brothers, as to perform his father's obſequies.

Again; if the horſe uſed for riding be neither very excellent nor very bad, and the undivided brother, who gains wealth with that horſe, be not greatly nor little ſkilled, nor totally inexperienced; in that caſe the reſt of the brethren ſhall have one ſhare each, and the acquirer two; and the phraſe cited by JÍMÚTA-

VÁHANA,

VÁHANA, ("two ſhares belong to the acquirer,") relates to this caſe only: in other inſtances, a rule of adjuſtment muſt be formed in due proportion thereto; for a diſtribution analogous to that which is ordained by legiſlators, is juſt in other caſes. By conſent of all authors, this rule of deciſion is only obſerved in the inſtance of property acquired by a coheir before partition. According to CHANDÉSWARA and the reſt, the ſhare of wealth gained by learning, which is allotted to a learned coheir, muſt be regulated in this mode. As for the diſtinction aſſumed on the opinion of JÍMÚTAVÁHANA and others, (who admit, *in ſome caſes*, the participation of a learned coheir, who did not contribute to the acquiſition of wealth, denominated the earning of ſcience, even though it were gained without uſing the joint ſtock,) that the proportion muſt be equable, becauſe no ſpecial diſtribution is ordained, and becauſe it is a maxim, that, "in the ſilence of the law, equality is preſumed:" that is wrong; for it would be an unjuſt diſparity, compared with the allotment of a double ſhare when the joint ſtock has been uſed.

## CCCLVII.

NÁREDA:—If one parcener, be he ever ſo ignorant, ſhall maintain the family of a brother ſtudying ſcience, he ſhall ſhare the wealth which that brother may gain by his learning.

"Shall maintain" being expreſſed in the ſingular number, if another brother ſupport the family of one who ſtudies ſcience, by the expenditure of his own *ſeparate* property, and by the labour of his body, he has a right to a ſhare of the wealth gained by that learning. So JÍMÚTAVÁHANA, with whom RAGHUNANDANA concurs.

"Wealth gained by that learning;" the ignorant brother ſhall ſhare what may be earned by that ſcience during the ſtudy of which he maintained the family of his brother, not wealth gained by any other ſcience. Since "ſtudying" indicates preſent time, the word being formed by a ſuffix equivalent to the ſign of the preſent tenſe, it muſt be underſtood that the family is maintained during the ſame period in which the ſcience is ſtudied. Since

preſent

present time signifies by acceptation the period of an action from its commencement until the effect be produced, the meaning is, so much time as is necessary from the commencement of the study to its final completion. Accordingly, if some of the acts requisite for the attainment of it be omitted, the man is not said to have learned the science. In like manner, the parcener can only claim a share if he have supported the family from first to last. Since it may be said of a student, "he studies science on such a day within that period," may not a parcener also obtain a share for maintaining the family on that day? In this place, the whole of the acts from the commencement until final completion must be implied: consequently, the ground of participation is the maintenance afforded to the family during the same period, corresponding day by day with that during which the whole of the several acts of reading and studying the science did pass.

"The word being expressed in the singular number, &c.;" then, if two brothers maintain the family by their own labour, and with their separate property, what should follow? They shall receive their due portions of a single share. Both are expressed by a term in the singular number; as the male and female buffalo, or male and female elephant, are denoted by single words. Must not some consequence be necessarily deduced from the use of the term in the singular number? The consequence is, that two shares are not allotted; nor any, if his family were maintained out of the joint stock. Is it not absurd that no share should be allowed when the family is maintained at the common charge, since the ignorant parcener has property in the joint stock? No; for the family of the student has as much right to support from the common estate, as that of the ignorant parcener. It should not be argued, that the student does not personally labour *for the support of his family*, but the other parcener does; and therefore, even though he have not a right to a full share, he may be entitled to half. In a text formerly cited (CIX), "kinsman" is a term used to signify "family and the like;" the text of VRĬHASPATI (XLV) justly allots a greater share on account of good qualities, because they tend to the support of the family; and the precept of NÁREDA (CVIII) directs, that he who is employed for the common benefit, shall be supplied by his brethren with food and vesture: the greater share allotted to him

out

out of the heritage is the reward of his perſonal labour. However, if the family of the ſtudent be ſupported by a parcener who acquires wealth by aſking funds on the account of his father, although he be deſtitute of hereditary property, that parcener is entitled to receive ſome part of the wealth gained by learning.

"Any thing given by a friend" (CCCXLV and CCCLII); received from him through affection; and if any thing have been given to a friend, and he, accepting the preſent, make a return to the giver, that alſo is exempt from partition; for the preſent was not made in expectation of a return. But if ſuch expectation were entertained, then, according to the opinion of CHANDÉSWARA and others, a diſtribution of the thing received muſt be admitted; for the term, "given by a friend," ſignifies on account of friendſhip: now this was not received from him on account of affection, but on that of a gift made. But when mutual friends preſent to each other tokens of regard, he who firſt makes a preſent knows that the other will make a return; he who accepts it, reflects, "he has given me this, I will make a return;" is any thing which is ſo received partible or not? The anſwer is, the gift was neceſſary, independent of the expectation that he would make a return; for, had the preſent been withheld, his friendly regard would have been forfeited: things ſo received are therefore exempt from partition, even though mutual gifts were preſented. But if a man make a preſent exceeding his means, through mere avarice, on pretence of affection, in the expectation of receiving a greater return, or with intent to defraud his coheirs, whatever ſhall be given to him by his friend is partible: common ſenſe ſupports this inference.

MENU explains wealth received on account of marriage.

## CCCLVIII.

MENU:—What is received with a damſel equal in claſs, at the time of accepting her *in marriage*, let a man conſider as wealth received with the maiden: it is deemed pure, and promotes increaſe *of proſperity*:

2. But let him know that to be received on account of

of marriage, which is accepted by him with his bride: all ſuch wealth is conſidered as vindicating the ſolemn rite.

"Equal in claſs;" of the ſame tribe: this is mentioned for the purity of the wealth ſo received; even that which is accepted on account of a marriage with a woman inferior in claſs is exempt from partition. "At the time of taking her *in marriage:*" this is a general inſtance comprehending any earlier period; for what is then given is pure, exempt from partition, and received on account of the maiden. "Accepted with his bride;" what is beſtowed on the bridegroom, *when* conducting her *to his home,* after the celebration of the nuptials. What is given to him by his father-in-law and the reſt after the marriage, muſt be conſidered as a mark of reſpect preſented to a gueſt *(mád'huparca).*

A preſent *(mád'huparca)* of honey, curds, and butter, in a veſſel of zinc, is the honour ſhown to a gueſt and the like: what is received with that token of veneration is *mád'huparca.* Conſequently, a man ſhould preſent to a venerable perſon who comes to his houſe, an *arghya* (or clean rice and *dúrvá* graſs in a vaſe made of conch, and containing water), a veſſel of water to waſh his feet, a cow and the like, as directed in the *Mahábhárata;* "let him preſent a cow and an *arghya.*"

In all theſe caſes, it is poſſible that joint property may be uſed; for the giver may entertain this expectation, "I will now gratify him *with preſents,* hereafter he will honour me *with gifts.*" However, if joint property be diſſipated by an expence exceeding the law, the giver's means, and general uſage, for the ſake of a ſubſequent gain; in no ſuch caſe is the wealth which is gained exempt from participation. But if the expence conform to the law, to the donor's means, and to uſage, the wealth received by him is indiviſible, according to CHANDÉSWARA and the reſt, even though joint property have been uſed; *but,* according to JÍMÚTAVÁHANA and others, it is partible.

He who with the aſſent of the other ſharers recovers what had deſcended from his father and paternal grandfather, and had been forcibly taken by others, ſhall not give it up to the reſt of the coheirs. Thus RAGHUNANDANA, commenting on the text of YÁJNYAWALCYA (CCCLII 2). The ground on which their

conſent

consent is here required, is an expression used by the author of the *Mitácshara*; "*what he thus recovers for his sole benefit*, with the acquiescence of other sharers." But that is not approved by CHANDÉSWARA and the rest: they hold, that the assent of coheirs is not requisite, since no words of such import occur *in the text*.

If five undivided brothers intend to recover a chattel which had belonged to their grandfather, but has been seized by a stranger, and was not recovered by their father by reason of his inability, and they wait an opportunity, remembering the words *of the poet*, "Manliness succeeds, O king! in due season, by the power of destiny;" in the mean time, one very cunning parcener resolutely attempts the recovery, and, through the influence of his good fortune, the end is accomplished: that the thing recovered should in such a case be exempt from partition, is an absurdity objected to the opinion of CHANDÉSWARA and the rest. However, we hold it reasonable, that silent neglect on the part of the other brothers should be deemed requisite *to the forfeiture of their right of participation*. But, in this case, it is held by the *Mitácshará*, RAGHUNANDANA, and the rest, that the property shall be distributed *among the coheirs*, if it have not been silently neglected *by them*. Still it appears, according to this opinion, that the partition shall be made, after giving a fourth part to him who recovered the property. The allotment of a quarter is directed by the text of SANC'HA, in the case of land: this is remarked in the works of RAGHUNANDANA and JÍMÚTAVÁHANA, where it is said "SANC'HA propounds a distinction in respect of land."

## CCCLIX.

SANC'HA:—But land which had formerly been lost, and which a single heir shall recover by his own exertion, his coheirs may divide according to their allotments, having first given him a fourth part of it.

By premising that he propounds a distinction in respect of land,

land, it is intimated, that a fourth part ſhall be allotted in the caſe of real property, the recovery of which had been neglected. A fourth part of ſo much land as is recovered, for inſtance, a hundred cubits out of four hundred, ſhall be taken by him who recovered it: thoſe who did not co-operate therein, whether five, ſeven, or ten brothers, ſhall take *the remainder* of the land, meaſuring three hundred cubits *in the inſtance above mentioned.* This appears to be the rule of adjuſtment, from the terms of the text, "the other coheirs." But this might be an unjuſt diſparity; for if one of two brothers regain property, and the other contribute not thereto, he who did not co-operate would have three quarters, and he who actually recovered the property, one quarter only. The term "other coheirs" is therefore indeterminate; or it may be definite, as it relates to their making a diſtribution; not to their *excluſive* receipt of ſhares. Conſequently, they ſhall divide *the reſidue* according to the number of brothers, including him who effected the recovery*. Or the words may ſignify, "the other coheirs alſo *may divide the land;*" and the number of ſhares would conſequently be one more than four times the number of brothers; out of which, he who regained the property ſhall take five ſhares, and the reſt four each: a fourth part therefore ſignifies the quarter of a full ſhare. It muſt be acknowledged, that if the coheirs be numerous, he who effected the recovery ought to receive leſs than if they were few; in like manner as in the caſe of property acquired by himſelf with ſupplies out of the eſtate. If two brothers regain the property, they ſhall take one fourth part to be ſhared between them; for it would be unreaſonable that they ſhould receive a greater allotment, ſince the recovery was a ſingle act done by both.

Admitting this in the caſe of land recovered, ſtill there is no proof that he who effects the recovery ſhall receive a fourth part of gems, or the like, when no neglect is *imputable to the other coheirs.* This ſhould not be affirmed; for he who regains the property muſt have the reward of his labour. It ſhould not be aſked whence the allotment of a fourth part is deduced. The rule eſtabliſhed in the inſtance of land muſt be extended to the preſent caſe, becauſe it is a maxim that the principles of law are to

* This ſeems the moſt equitable; the acquirer has a fourth of the whole, and his regular ſhare of the remaining three fourths. T.

to be applied uniformly in all consentaneous cases. Nor should it be asked, why may not the rule of allotting a double share, which is established in the case of an original acquisition made without using the joint property, be applied to this? The labour requisite to remove a defect in a thing already done, is light in comparison with the labour necessary to effect a thing not yet done. But if he successfully attempt the recovery of the property, against the warning of the other coheirs to wait a fitter opportunity, he shall not receive a fourth part, *but his simple share of the general distribution*: such is the inference of common sense.

This text of SANC'HA (CCCLIX), cited in the *Mitácshará*, is unnoticed by CHANDÉSWARA, because it has been omitted in the *Smriti-mahárnava*, *Cámadhénu*, *Calpateru*, *Párijáta*, and other works. It has been noticed by RAGHUNANDANA and JÍMÚTAVÁHANA, because it is found in the *Mitácshará*.

But others hold, that, even admitting the authority of this text, land is there an instance of a general meaning; and *the precept* relates to the case where the coheirs had not silently neglected the assertion *of their claim*; but if they neglected it, the property recovered by a single coheir is not partible, even though it be land.

"Wealth acquired by learning," in the text of VYÁSA (CCCXLVI), signifies the acquisition of science; and that, as above mentioned, is wealth gained, without using the joint property, by learning attained after a maintenance provided by one of a different family, and so forth. Such is the interpretation of JÍMÚTAVÁHANA and the rest. According to CHANDÉSWARA, and others, it is wealth gained by science attained after a maintenance provided by a stranger, a prize having been offered by some third person for the proof of superior learning, whether supplies be or be not received out of the common estate during the acquisition. The following text explains the earnings of valour:

## CCCLX.

MENU:—When favour is shown by a leader, pleased with a gallant action which a soldier performs, well knowing his danger:

2. What-

2. Whatever is then received *as a reward* ſhall be *conſidered as wealth* gained by valour: *that*, and what is taken under a ſtandard, are declared not to be partible:
3. What is taken in war, after routing the force of the enemy, by a ſoldier who riſked his life in the ſervice of his maſter, is named *ſpoil* taken under a ſtandard.

Theſe texts are again cited *in this place* to ſubjoin the explanation of the ſenſe*. "Well knowing his danger;" aware of the riſk *to which he expoſes* his life. "Gallant," with reſolution. "Action;" the ſervice deſired by his maſter, ſuch as the ſlaughter or diſcomfiture of the enemy, and the like. Does not war univerſally cauſe riſk of life? *The anſwer is, ſervice, in* the preſence of a powerful foe, is intimated by the mention of danger. "When favour is ſhown by a leader, pleaſed with ſuch an action, &c.;" conſequently, wealth received by *the* favour *of the chief* is alone deſcribed by this text as the earnings of courage. "And what is taken under a ſtandard;" the particle connects this with the acquiſition of valour before mentioned, which is thus declared not to be partible. "By a ſoldier who expoſed his life in the ſervice of his maſter;" who diſregards the riſk of his life in compariſon with the ſervice of his employer. Hence, what is plundered from the army of the foe, having routed the hoſtile force after a tremendous conflict, is ſpoil taken under a ſtandard. Both theſe are technical terms for certain *deſcriptions of* wealth. According to CHANDÉSWARA and others, they are not partible, even though joint property had been expended before battle, for the purpoſe of obtaining favour from the chief. In either caſe, no partition can be *claimed*, even though a horſe or the like, appertaining to the coheirs, contributed *to the acquiſition*. In the caſe of ſkill with the bow and the like, a ſhare muſt be given to a parcener no leſs ſkilful, as in the caſe of agriculture, to *ſuch* a huſbandman; for, though expert, he has no ſuperiority *over another ſkilful coheir* in capacity for an act of dexterity. But, according

* I prefer inſerting them here, and have therefore omitted the former quotation. T.

according to JÍMÚTAVÁHANA and the reſt, this is intended as an example: if the joint property be uſed, wealth acquired by theſe means is partible.

The term *(ſaudáyica)*, which occurs in the text of VYÁSA (CCCXLVI), ſignifies what is received from a father or other *(ſudáya)* affectionate kinſman. So NÁREDA (CCCLIII*), and VYÁSA (CCCLIV). Property received at the time of accepting a bride, is "wealth given by the kinſmen of a wife" (CCCLIII 1); for this coincides with the text of BHARADWÁJA, "and that which was received with a bride." The appoſition is not in that form which is called *tatpuruſha* of the ſixth caſe, and which would exhibit, as the ſenſe of the compound, "property of the wiſe;" for it could not be ſuppoſed that brothers can claim partition of wealth which belongs excluſively to a woman. Such is the opinion of authors.

"A mother has alſo power *over her own*" (CCCLIII 2); this regards female property. Thus the *Retnácara*. It may alſo relate to an eſtate left by the paternal grandfather, and which had devolved on his daughter *by the failure of male heirs;* for ſhe alone is then proprietor of that wealth: although her gift *or other alienation of ſuch property* be forbidden, as will be mentioned under *the head of* Succeſſion to the eſtate of a man who leaves no male iſſue, what is given *by her* to her ſon, on account of his *filial* piety or the like, is *a* valid *gift*. But although the wife have an intereſt in the wealth of her huſband during his life, under the text which declares property common to the married pair (CCCCXV), his wealth given away by her is not *a* valid *donation;* for ſhe has not at that time independent power over his eſtate.

The dependence of a woman whoſe huſband is living, even in reſpect of property inherited from her father, who left no male iſſue, is only ſuggeſted by the text of MENU (Book II, Chap. iv, V. 56); it will be mentioned, that women are independent in reſpect of female property only: as the wealth of her living huſband is declared by the text of the legiſlator to belong to both, does not that which is gained by the wife in right of birth, or through perſonal labour, equally belong to both? VÁCHESPATI BHATTÁCHÁRYA does not acknowledge the right of the huſband



* Both verſes were cited in this place; I have inſerted them in the place where the firſt verſe was quoted. T.

band in the property of his wife during her exiſtence, nor her's in her huſband's property during his life: for the text relates to another ſubject, namely to *wealth* given away. But thoſe who admit both, affirm the right of the huſband, controlled by his wife, in that which is acquired by her; and the right of the wife, controlled by her huſband, in his wealth; and they alſo affirm her ſubjection to him in reſpect of her perſon and ſo forth: hence they ſay, any thing given away by her, without the aſſent of her lord, is not *a* valid *gift*. But others aſſert, that it is valid, like *diſburſements made by a wife for* the ſervice of gueſts and the reſt. It ſhould not, *they think*, be argued, that her huſband has given a general ſanction to *her diſburſements for* the ſervice of gueſts or ſimilar purpoſes, and therefore the expenditure is legal: but, in this caſe, ſince aſſent is wanting, how can the gift be valid? It is the general practice to do ſo, *ſay theſe lawyers*, even though aſſent be wanting. That *inference* does not ſeem conſiſtent with the law; but, if her huſband did aſſent, any thing given by her through favour is indiſputably a valid donation: in this caſe, however, the tacit aſſent of her lord muſt then only be inferred, when the father, ſubſequently informed of a gift made *to his ſon* by his wife unauthorized by him, expreſſes no diſapprobation, but *on the contrary* ſays, "let her do as ſhe pleaſes." Both in this caſe and in that of wealth given by the father, it ſhould be remarked, that any gift made or approved by him, under the influence of luſt or wrath, is not valid; *but*, any donation made or confirmed by him through tenderneſs, with due conſideration of good qualities, and of religious duty or the like, is good in law.

As for what *ſome* deduce from the uſe of the word 'father,' and other terms expreſſing relation, that what has been given by any other perſon is partible, (namely, what is received from any other except the father and the reſt, without uſing the joint eſtate;) that has been already diſproved: but, this *text* uſing the word father, which denotes relation, is an anſwer to one who entertains a doubt, "may I not ſhare the wealth given to thee by our parent (or other relative), ſince it is the wealth of my father (or other kinſman)?" Hence it is ſaid in the text of Vyása, "that ſhall not be claimed by coheirs" (CCCLIV).

If the ſame thing, already given to one ſon, be given a ſecond time to another, he to whom it was firſt given ſhall alone take it;

it; under the text of YÁJNYAWALCYA "in the caſe of a pledge, a gift, or a ſale, the prior contract ſhall prevail" Book II, Ch. ii, V. 28.) RAGHUNANDANA.

## CCCLXI.

MENU:—After the death of the father, if the eldeſt brother acquire wealth *by his own efforts, before partition*, a ſhare of that *acquiſition* ſhall go to the younger brothers, if they have made a due progreſs in learning.

As for this text of MENU, the meaning is, ſince they are placed *in a relation* ſimilar to *that of* father and ſon, by a former text (XII), the youngeſt brother has a claim on the wealth of the eldeſt, even though acquired without the uſe of the patrimony, as *he has* on the wealth gained by his father: in reſpect of this, a diſtinction is propounded by the text; even unlearned brothers have a right to wealth acquired by their father; but learned coheirs only have a claim to that which is gained by the eldeſt brother: and this is demonſtrated; for the terms of the text ("after the death of the father," "the eldeſt brother," "the younger brothers," "if they have made a due progreſs in learning," and ſo forth,) would *otherwiſe* be unmeaning. Such are the very words of JÍMÚTAVAHANA. This relates to wealth not acquired by learning; for, property gained through ſcience, by a younger brother, during the life of his father, muſt be alſo ſhared with an elder one who has made a due progreſs in learning. But, in the preſent inſtance, no diſcrimination of equal or leſs attainments in ſcience is made by the legiſlator.

At this time, ſince an elder and younger brother do not now behave as father and ſon, it appears that this rule ſhould not be obſerved. On this ſubject JÍMÚTAVAHANA remarks, that partition of any thing received in donation without having uſed joint property, as it is now practiſed among good men, is not without ſome foundation in brotherly affection and human wiſdom: or, if another ground of the preſent practice be *affirmed*, (*namely*, that *coheirs*, ſeeing wealth which had been received in donation diſtributed, becauſe it was the acquiſition of ſcience, and becauſe

partition among brothers, equally or pre-eminently learned, is ordained in the caſe of wealth earned by knowledge, even without the uſe of joint property; and not knowing that this partition of effects ſo gained was ſpecially made on account of learning, but erroneouſly ſuppoſing it made *merely* becauſe the wealth was acquired before partition; have themſelves introduced this practice:) ſtill there is nothing groundleſs. It is his opinion, that partition made ſolely becauſe the wealth was acquired by an undivided parcener, is founded either on affection, on human *inſtitutions*, or on *habitual* error.

SANC'HA and LIC'HITA propound other thiugs not ſubject to partition:

## CCCLXII.

SANC'HA and LIC'HITA:—There is no diviſion of a a houſe or garden *made by one ſon for himſelf*, nor of water-pots, ornaments, utenſils *for food and the like*, nor of concubines or clothes, nor of water *in pools or wells*, nor of paſture ground and roads: ſo *ſaid* the lord of created beings.

The place of abode; "the houſe." Conſequently, if five brothers, during the life of their father, ſleep, eat, and ſo forth, in five ſeparate and diſtinct houſes; in that caſe, when partition is made after the death of the father, each ſhall retain his own apartment; lots ſhall not be caſt *for thoſe habitations*. But if there be not five houſes, then only ſhall they make a diſtribution; and, after allotting the former dwellings in the order of ſeniority, other houſes ought to be built *for the younger brothers*: but, if the diſparity be exceſſive, an actual partition muſt be made. This is *conſiſtent with* common ſenſe.

Of water-pots or metallick veſſels for water, perſonal ornaments, utenſils, (literally what is adapted for uſe, or what is employed,) of concubines or clothes applied to the uſe of one parcener, it appears that there ſhall be no diviſion.

The *Retnácara*.

The term uſed in the gloſs *(lauha)*, ſignifies any metallick veſſel; for it is ſo explained in the dictionary of AMERA. Conſequently,

ſequently, each parcener ſhall now take that water-pot which he uſed during the life of his father: lots ſhall not be caſt for it. This *takes place* if each individual be provided with veſſels, and if the diſparity be not exceſſive. Such is the reaſon of the law, and the *ſubſiſting* practice.

"Ornaments;" not ſuch as have been given through favour, but ſuch as were worn by each. Here again exceſſive diſparity muſt be avoided. But, if any ornaments remain in the treaſury, and are ſometimes worn by any one parcener during feſtivals, ſuch ornaments ſhall be ſhared even by him who did not wear them; for it is not underſtood that theſe belong excluſively to him who occaſionally uſes them. It is the ſame in the caſe of clothes. But ſince partition could only have been ſuppoſed on the day when the parcener firſt began to wear them, with the aſſent of the father, of the elder brother, or of the ſpiritual counſellor, expreſſed in theſe words, "let him wear this apparel or theſe ornaments," therefore the clothes and the jewels belong excluſively to that *parcener who habitually uſes them.*

"Nor of water *in pools or wells*, nor of paſture ground and roads;" the whole phraſe, *according to one reading (apám prachárárt'ha)*, may ſignify the channel for the iſſue of water, and which is called a drain. Raghunandana reads *apám prachára rat'hyánám; rat'hyá* ſignifies a road, the way by which men and cattle paſs *and repaſs*. If the channels for the paſſage of water can be formed in ſeparate places, a diviſion is unexceptionable. It is not declared neceſſary that the water ſhould run, by the former drain, through the court belonging to any one brother: but if all the parceners point out that channel, *it muſt remain in common*. Such *is the inference of* common ſenſe.

## CCCLXIII.

Menu and Vishnu:—Apparel, carriages, or riding horſes, and ornaments *of ordinary value, which any of the heirs had uſed by conſent before partition*, dreſſed rice, water *in a well or ciſtern*, female ſlaves, family prieſts, or ſpiritual counſellors, and

 paſture

paſture ground for cattle, the wiſe have declared indiviſible, *and ſtill to be uſed as before.*

"Apparel;" clothes for perſonal uſe. JÍMÚTAVÁHANA. "Carriages;" the term *(patra)* is expounded by CHANDÉSWARA property recorded in a writing; for that coincides with the text of CÁTYÁYANA (CCCLXV I). The meaning is, property recorded in a written ſtatement of his own affairs, by the father or other predeceſſor, *in this form,* "ſo much given to ſuch a one." HELÁYUDHA, the author of the *Pracáśa,* JÍMUTAVÁHANA and others expound it, a horſe or other animal uſed for carriage. AMERA explains the word *patra* "carriage or conveyance, leaf, feather, arrow."

"Dreſſed rice;" JIMÚTAVÁHANA expounds the term *(critanna)* ſweetmeats or the like; the *Retnácara* explains it flour or ſimilar things; the *Párijátá* expounds it rice or other food. In fact, all theſe interpretations ſhould be admitted; for all may be comprehended under the term "and the like." Conſequently whatever has been provided by a father for the food of his own ſon or daughter, or other relative, is exempt from participation.

"Water;" except that which is contained in a pond or well; running water. Thus JÍMÚTAVÁHANA. But, in fact, no partition is made of a ſingle well or the like; for VRĬHASPATI propounds another mode of participation therein. It ſhall not be divided like other things; ſuch is the meaning of MENU and VISHNU. In like manner, his own property, recorded in an inventory as above mentioned, ſhall not be divided. Some explain "water," veſſels uſed therefor, as mentioned by SANC'HA and LIC'HITA (CCCLXII).

"Female ſlaves" employed by one parcener. Thus the *Retnácara.* Conſequently, the parcener who employs a female ſlave ſhall retain her. This rule is obſerved when the ſlaves are numerous, and the employment continual. It is founded on the coincidence of the text of GÓTAMA (CCCLXVII). The term uſed *(ſambhóga) here* ſignifies employment, ſuch as rubbing his limbs or the like. The word which occurs in the text *(ſtriyah),* may ſignify "women other than female ſlaves."

The

The ſubſequent terms *(yógacſhéma prachára)* are explained by JÍMÚTAVÁHANA, the bed and veſſels uſed in eating, drinking, and ſo forth. In the *Retnácara* the ſame words are explained family prieſts, or ſpiritual counſellors, and the road by which cattle paſs. According to this interpretation, one term muſt be read with a final M *(yógacſhémam)*. Or the appoſition may be in the form called *carmad'háraya*, inſtanced in the expreſſion 'king fond of pot-herbs;' "the path together with the family prieſts." The ſame term is explained in the *Pracáſa*, hereditary livelihood in the king's family or the like; that is, performance of ſacrifice, ſervice in war, the ſale of cow-tails and ſimilar articles *for the king's uſe*, menial ſervice, and ſo forth. It is cuſtomary to diſtribute the privilege of ſacrificing *for the king* and the reſt, by regulating the periods *of ſeparate enjoyment, ſuch as* a month each, or the like. HELÁYUDHA ſubdivides the term; a boat or ſimilar conveyance *(yóga)*, and a fort or other place of ſafety *(cſhéma)*. All theſe things, mentioned by various authors, are in certain inſtances exempt from partition.

## CCCLXIV.

VYÁSA:—A place of abode, vehicles, prepared grain, water, and women, ſhall not be divided; nor a place of ſacrifice, *nor an idol*, even though it had been tranſmitted from father to ſon for a thouſand generations.

"A place of abode;" *literally* a field: the houſe and garden. Thus CHANDÉSWARA. Others expound "field," a piece of ground which is the common ſite of habitations. "A place of ſacrifice;" the ſpot where religious rites are performed. So JÍMÚTAVÁHANA. Sacrifice ſignifies the worſhip of deities.

## CCCLXV.

CÁTYÁYANA:—Property recorded in a written document,

cument, and that which has been appropriated to religious uſes, water, wives, and a corrody which has deſcended from anceſtors,

2. Clothes *of great value* kept in the treaſury, ornaments, and whatever is naturally indiviſible, ſhall be uſed alternately by the kinſmen during periods aſſigned to each.

3. Paſture ground for kine, a common way, apparel, and whatever elſe is worn on the body, neceſſary implements of learning, *as books and the like uſed ſeverally*, or of arts, *as pencils or tools*, are indiviſible, according to Vrĭhaspati, *but if no other property remain, muſt be ſold, and the price of them muſt be diſtributed.*

4. But Bhrĭgu declared, that whatever cuſtomary law of a country, a claſs or tribe, a company *of merchants and the like*, or of a town, ſhould be alleged and proved, the diſtribution of an inheritance muſt reſpectively be made according to that cuſtom.

" Property recorded in a written document;" wealth given away or promiſed to any one on a religious conſideration. Or property recorded in a written document, (that is, a debt,) which was lent for religious purpoſes, is not partible. " Water;" jars uſed in the worſhip of deities. Thus the *Retnácara*. " A corrody;" a penſion which is aſſigned *(nibadhyaté)* by the king, on a mine or the like, (that is, a penſion which is fixed as it were by words, or which is made irrevocable,) is a corrody *(nibandha)*: the ſuffix bears the paſſive ſenſe. Or the ſame inflection may bear a neuter ſenſe; thus, " ten certain things ſhall be received by you from this mine for ſuch a ſpace of time," and ſo forth*. In like manner, the rights of *Bráhmanas*, who attend at funerals,

* The explanation exhibits no neuter ſenſe. T.

rals*, and ſimilar privileges, muſt be conſidered as corrodies. The immunities of a *Brāhmanu*, who burns dead bodies, and other ſimilar rites, are in a manner fixed in perpetuity: but there is this difference, that he receives his dues as the reward of his trouble. "Deſcended from anceſtors," is merely illuſtrative; for the reaſoning is equally applicable to what has not been inherited.

"Clothes kept *in the treaſury;*" and bearing a great value.

The *Retnácara.*

"What is naturally indiviſible;" what is incapable of diviſion, as a tree or the like. Theſe things above mentioned are declared exempt from partition, becauſe an actual diviſion is almoſt impracticable. For a corrody, or the *future* receipt of ten certain things or the like, or the promiſe thereof, cannot be diſparted; it is therefore pronounced indiviſible: but the ten things received as the produce of it ſhall be diſtributed, as will be mentioned.

"Paſture ground for kine" (CCCLXV 3); the path of cattle †. "A common way;" a road uſed by men and women. Such is the difference.

"Apparel" of ſmall value, and whatever elſe is worn on the body. Thus the *Retnácara*. There is conſequently no vain repetition. The meaning is this: whatever apparel is uſed by any one parcener, that veſture worn on the body ſhall be taken by him alone; lots ſhall not be caſt. But apparel of great value, adapted for attendance at the royal court, muſt remain in common; for if it were taken by one parcener, the reſt would be prevented from repairing *occaſionally* to the royal reſidence. But if there be much *valuable apparel*, partition is unexceptionable. After ſelling or otherwiſe diſpoſing of unworn clothes, they may be repurchaſed, or otherwiſe regained, by paying the value out of ſeveral property: on this conſideration, the legiſlator has added "worn" (CCCLXVI). Others expound the term *(dhritam)* kept in the treaſury. It is indiviſible; partition will be of courſe forbidden, *becauſe it cannot be diſparted:* but what is worn on the

* *Agrahárica.* See Book II, Chap. iii, S. 2. T.

† The word *prachára* alſo ſignifies paſture ground: I follow Sir William Jones in ſo tranſlating it. T.

the body ſhall not be *even* ſhared, by ſelling it, and dividing the price: to intimate this, ſay theſe lawyers, apparel is again mentioned.

"Neceſſary implements of learning;" the term *(prayójya)* is explained by HELÁYUDHA, a loan advanced; a ſum neceſſary to be inveſted in traffick or the like. For inſtance, a hundred pieces of money being appropriated to the commerce of a merchant, traffick is conducted on that capital in a remote province, by means of navigation; if that be divided among his ſons, ſuppoſe ten brothers, no one of them can *afterwards* carry on a ſimilar trade: ſome lawyers ſo explain *the precept.* The ſame term is expounded, things required for uſe, as books or the like; theſe ſhall not be ſhared by ignorant coheirs, whether to ſell or merely to uſe them: it is ſo affirmed in the *Párijáta*, the *Retnácara*, the treatiſe of JÍMÚTAVÁHANA, the *Dáyatatwa*, and other works.

"Neceſſary implements of arts;" as pencils and the like. Thus the *Retnácara*. But HELÁYUD'HA explains the word "arts" as ſignifying means of ſubſiſtence in general; books, pencils, and tools, required for that purpoſe, muſt therefore be comprehended by this term.

## CCCLXVI.

VRĬHASPATI:—They by whom it is affirmed that clothes and the like are indiviſible, have not proved that the collected wealth of opulent men, their vehicles and ornaments, ſhall not be divided;

2. Property held in common *would be* unemployed, for it cannot be given to one *in excluſion of another:* therefore it muſt be divided by *ſome mode deduced from* reaſoning; elſe it would be uſeleſs.

3. By the ſale of clothes and ornaments; on the recovery of a written debt; by compenſating the dreſſed

dreſſed food with *an equal allotment of* undreſſed grain; an *equitable* partition is made:

4. Water drawn from a *ſingle* well or pool ſhall be taken by turns; a bridge and a field ſhall be ſhared *by coheirs* in due proportion:
5. Let a *ſingle* female ſlave be ſucceſſively employed by coheirs in their reſpective houſes, according to their ſeveral ſhares; if numerous, the ſlaves ſhall be diſtributed in equal allotments: ſuch is the law in reſpect of female ſervants:
6. The benefit received from family prieſts, or ſpiritual counſellors, ſhall be equally ſhared; and the paſture ground for cattle ſhall be uſed by the coheirs in proportion to their allotments.

From this text of VRĬHASPATI it appears, that the indiviſibility of clothes and the like is founded on the letter of revealed law, not inferred from its ſenſe. The ſame may be affirmed to be the import of the precepts of legiſlators. Thus, partition of clothes and the reſt, if caſually made, cannot be imputed as a fault. "*It is not proved, that* the collected wealth of opulent men (the vehicles, ornaments, houſes, and other property of thoſe who have many dwellings, many carriages, and ſo forth,) is indiviſible." This word is brought forward with the *neceſſary* alteration of gender and number. Conſequently the houſes, ornaments, and the like, muſt be diſtributed by an *actual* partition, or by ſelling them and dividing the price. Such is the ſenſe of the text.

"Property held in common would be unemployed;" it would be unuſed: a ſingle chattel, appertaining to two perſons, would not be put to uſe; neither of them could employ it: *for* it cannot be given excluſively to one, ſince another is part-owner of it. Therefore muſt it be divided by *ſome mode deduced from* reaſoning; elſe (if a rational diſtribution be not eſtabliſhed) it would be uſeleſs; *for* it could not be employed by any one. An argument is here deduced from the abſurdity of the converſe propoſition.

In

In the text of CÁTYÁYANA (CCCLXV), property recorded in a written document (that is, a debt,) is pronounced indivifible; and fo are clothes, ornaments, and the like. But apparel and the reft may be fold, and the price of them diftributed; and a debt, when recovered from the debtor, fhall be fhared. That partition of dreffed grain fhall not be claimed, is declared by MENU, VISHNU, and VYÁSA: but if all the coheirs have not *received* prepared food, but one alone *have*, an equal fhare of undreffed grain fhall be given *to the reft*. If there be but one well, or one pool, a diftribution by partition of the water and the like muft be admitted; and a dyke fhall not be made in the middle of the pool. "By turns;" if the pond contain little water, and all the wants of all the coheirs cannot be fupplied, let them each draw ten or five jars of water; and, fetching further fupplies from other places, fatisfy their other wants: and this muft be done with confideration. A field is pronounced indivifible by VYÁSA, becaufe the fection of it is literally impoffible; but, although it cannot be cut, it may be parted by a ridge: therefore does the legiflator add, "a field fhall be fhared in due proportion" (CCCLXVI 4), and that in the cafe of a fingle field uniform in its fertile quality; but if there be many fuch, there is no neceffity for parting one by a ridge. The partition of a garden, and of houfes, fhall be fimilar to that of a field. A fingle female flave may be fhared: the mode of diftribution, proportionate to their refpective allotments, is by a computation of labour; for inftance, 'let this female flave fweep all their houfes, prepare food to be eaten by all, and make all their beds;' here it is evident there can be no difparity: or by a computation of time; for inftance, fhe muft work in each houfe one watch every day, or five or fix days in every month, and fo forth. If they be numerous, one or two female flaves fhall be allotted to each coheir. In this cafe, the rule propounded by GÓTAMA muft be obferved.

## CCCLXVII.

GÓTAMA:—A female flave fhall belong exclufively to that parcener by whom fhe is poffeffed.

But

But if many be poſſeſſed by one parcener, and none by another, the number muſt be made equal. No diſpute ſhould be excited for any ſmall difference in age, ſtrength, and good qualities. Such is GÓTAMA's opinion. This muſt be conſidered as the ſettled rule reſpecting female ſlaves (CCCLXVI 5).

Of counſellors and family prieſts, or (according to the variance of opinions on the ſenſe of the words *yōga cſhēma)* of the hereditary livelihood, or of a boat and fort or the like, or of veſſels for eating and drinking and the reſt, an equal diſtribution ſhall be made; that is, by equal numbers *allotted to each*. Conſequently, that which is ſeverally adapted to the buſineſs of each, ſhall be taken by him: but in caſe of inequality of number, or great diſparity, ſome compenſation muſt be given to another *parcener;* the diſtribution ſhall not be made by caſting lots. Hence this does not contradict MENU and the reſt.

CHANDÉSWARA obſerves, that valuable clothes and the like are pronounced naturally indiviſible; hence the indiviſibility propounded by MENU and the reſt, which forbids the literal diviſion of apparel of ordinary value, muſt be conſidered as relating to partition in any other form except that which is directed in the caſe of valuable apparel. There is no diſcrepance.

Conſequently other Sages have pronounced theſe things indiviſible, on a conſideration of the revealed maxim which ſhows their indiviſibility: but the legiſlator, having mentioned the abſurd conſequence of a general denial of partition (CCCLXVI 2), eſtabliſhes the inference that a diſtribution ſhall not be made by actually diſparting the things, and regulates a virtual partition to be deduced from that revealed maxim. Such is the meaning of the gloſs.

But the author of the *Pracáśa* thus expounds the text: it is not proved by them that the ſcriptural precept, "divide not clothes," relates to veſture of ordinary value. "The property of opulent men;" that is, ſuch things as can only be taken by opulent perſons, *namely*, goods bearing a high price, muſt be divided *in a mode deducible* from reaſoning; becauſe they cannot be yielded to one parcener. But things of ordinary value may be given up, for they are *mere* chaff. Conſequently the precept, "divide not a vehicle, or beaſt uſed for a carriage," relates to an elephant, horſe or the like. Such is VRĬHASPATI's meaning.

But

But if the elephant or horſe be ſingle *in its kind*, a mode of diſtribution is propounded; by ſale, &c." (CCCLXVI 3).

Others conſider the text of VRĬHASPATI as an inſtance exhibited. The phraſe, "muſt be divided by *ſome mode deduced from* reaſoning," is merely an illuſtration. Conſequently, if there be reaſon to apprehend the deſtruction of the thing, ſhould an *actual* diviſion be made, then the ſcriptural maxim bears that no ſuch partition ſhall be made: but if that apprehenſion be not entertained, as in the caſe of an ingot of gold or the like, then an actual diviſion ſhall be made by the univerſal conſent of legiſlators. *If it be alleged, that* partition, in the caſe of numerous *elephants, horſes, or* vehicles, is propounded by no legiſlator, in conſequence of the ſcriptural maxim "divide not a vehicle," that is affirmed groſsly without *due* inquiry. Hence there is no diſparagement to MENU and the reſt; but otherwiſe they might be ſuppoſed to be diſgraced by an aſſertion deficient in juſt reaſoning. Conſequently there is no harm in making a partition when the number *of ſimilar things* is great. Even a ſingle chattel muſt be ſhared by ſale *and diſtribution of the price*, or by regulating the periods of enjoyment. It is not meant that female ſlaves and the reſt may not be ſold, nor that apparel and the like may not be uſed *by turns* at regulated periods, nor that a debt ſhall only be divided when recovered from the debtor: accordingly, although it may not be immediately recoverable, it is the practice to diſtribute ſuch claims by figures. Of clothes, inconſiderable in value, and worn *by one parcener*, a partition may be made, as *in the caſe* of dreſſed grain, *by giving an equivalent to the reſt*. Valuable apparel may be divided, by ſelling it, *and diſtributing the price*.

According to JÍMÚTAVÁHANA, "women," in the text of MENU (CCCLXIII), ſignifies 'women other than female ſlaves.' He conceives that MENU, VISHNU, and VYÁSA, deny the partibility, which might be ſuppoſed, becauſe wives ſeparately obtained in marriage are gained at the expence of the joint-eſtate. It ſhould be here remarked, that of wives there is no partition even by equity, *or in the mode deduced from reaſoning*; for a woman, however obtained, is declared by MENU (CCLII 4) to belong excluſively to her huſband. It ſhould not be argued, that, like dreſſed grain, the ſhare ſhall be made good by

by providing another damſel *for the coheir.* Although joint property may have been uſed, a ſhare need not be made good; for joint property *in a wife* is not acknowledged. For that ſole reaſon, women are pronounced indiviſible. In fact, female ſlaves only are denoted in a ſtrict ſenſe by that term, for partition by equity is propounded by VRĬHASPATI for them only; but of wives a partition could not even be ſuppoſed, ſince they are not common to the coheirs.

Conſequently, when a father or other predeceſſor dies, a right veſts in all the heirs, as is acknowledged by RAGHUNANDANA, over all which belonged to him, gold and ſilver ignots, female ſlaves, kine, and the like; for the cauſe is uniform. Hence, ſince it might be ſuppoſed that every thing ſhall be diſparted, therefore legiſlators have forbidden the diviſion of certain effects; and VRĬHASPATI has directed a diſtribution, by allotting one entire thing to one parcener, and another entire thing to another parcener, and ſo forth, if the *ſimilar* effects be numerous; and by regulating the periods of alternate enjoyment, or by ſale or otherwiſe if the chattel be ſingle. After diſparting an ingot of gold, or the like, the former right being deveſted, the property of the ſeveral portions veſts in each brother by the help of lots caſt, or by other means; for the integrant parts of the thing which belonged to the father, or other predeceſſor, *are ſeparated* like *the fragments of* a broken jar or the like. It ſhould not be objected, that ſuch is not the ſenſe of the law; but the meaning is, that a thing ſhall not be diſparted, when partition can be made by diſtributing an equal number of ſuch things *to each parcener;* in proof of which the exiſting practice is alleged. Were it ſo, there would be an impropriety in VRĬHASPATI mentioning the equal diſtribution of numerous female ſlaves, when he is treating of partition by the equity *of the precept.* But the practice is current even in the caſe of gold and ſilver ingots, becauſe partition, without breach *of an integral,* is obſerved in the caſe of gold and ſilver coins, apparel, kine, buffaloes, and the like. Nor ſhould it be objected, that, if the act of diſparting alone conſtitute partition in a legal ſenſe, cattle and the like muſt be diſſevered, ſince no legiſlator has pronounced them indiviſible. They are declared ſo by CÁTYÁYANA, "whatever is naturally indiviſible" (CCCLXV 2). But, here, any thing which cannot be literally divided

divided muſt be diſtributed by *the* equity *of the precept;* and in the inſtance of thoſe things, of which partition is ſeparately denied, ſuch as a female ſlave, a water-pot, or the like, ſolely enjoyed by one parcener, compenſation is made by an equivalent. In the caſe of books and ſimilar things required for uſe, all may claim the benefit of them, although they remain in common. In ſuch a caſe, if one of five brothers be illiterate, he obtains no ſhare of the books: but his ſon, if learned, may claim the uſe of them; if he be alſo illiterate, he obtains no participation.

Should five or ſeven generations paſs thus, and afterwards one *deſcendant* become learned, ſhall he obtain his ſhare or not? Although they be called indiviſible, ſtill a right devolves on him, ſince the books were *ſucceſſively* the property of all his anceſtors. It ſhould not be objected, that the right ſtops with the fourth in deſcent, under the text of DÉVALA (LXXXI). For it may be reconciled by conſidering it as relating ſolely to that property which is not pronounced indiviſible; elſe, if all the brothers and all their deſcendants be illiterate, theſe books would become a waif after the fourth generation. If the right of property ſubſiſt in one caſe, although the thing be indiviſible, it ſubſiſts equally in the preſent inſtance. In this manner, if the eighth in deſcent be able to uſe the books, they would be refuſed by the reſt through knavery, or becauſe the library is in their poſſeſſion. There are not conſequently any means of preventing illegal acts.

Again; if a learned coheir, taking a book which cannot be poſſeſſed by the illiterate parcener, ſell it, what is the rule in that caſe? Some thus reconcile *this ſeeming difficulty:* if the books have not been uſed through four generations, there can be no ſubſequent claim, as appears from the text *above cited* (LXXXI). If the learned parcener ſell it *earlier*, the coheir is entitled to receive his ſhare; for the books and the reſt are alone pronounced indiviſible, not their price. But others hold, that property is only deveſted by ſilent neglect through four generations, not without neglect; elſe a thing bailed to any other perſon, and not enjoyed by one of the parceners during four gradations, would become a waif; conſequently their property ſubſiſts through ſucceſſive generations. Having no occaſion for its uſe, the owner does not keep a thing in his poſſeſſion; but he ſhould bail it, previouſly taking an atteſted writing. At preſent, from appre-

henſion

henſion of fraud, even books and the like are brought into partition; but that is not deemed legal in the *Párijáta*, *Retnácara*, *Dáyatatwa*, and other works.

In the preſent inſtance, the form of a diſtribution by the equity of the law is this: after making a written *catalogue*, the books ſhould be diſtributed in the reſpective houſes of all the coheirs; the whole library ſhould not be placed in the houſe of one of the parceners. In fact, the work of carpenters and other artiſans would be impeded, if no partition could be made of the axes, hammers, and other tools; but if they be diſtributed without giving any ſhare to one who is ignorant of the art, his ſon could not *afterwards* obtain his allotment: the ſkilful brothers ſhould therefore divide the tools, and follow the profeſſion; but if the ſon of an undeſerving brother afterwards become ſkilful *in that profeſſion*, he may claim a freſh partition. If any tool have been ſpoiled or deſtroyed by uſe, let that be relinquiſhed, and the remainder ſhared with the ſon of the undeſerving coheir. But ſhould theſe brothers, who are ſkilled in their art as carpenters, ſell any tool, they muſt, when the ſale is afterwards diſcovered, give a ſhare of the price; but they are not in this caſe liable to a fine.

According to HELÁYUDHA, books and the like are ſubject to partition; for he does not enumerate them among indiviſible things, but explains the term *(prayójya)* as ſignifying a loan *advanced*. This opinion ſeems accurate; for VRĬHASPATI has not noticed the equitable diſtribution of books and the reſt. But it would be indecorous to contradict the *uniform* aſſertions of many authors, *from* CHANDÉSWARA and the reſt, down to the modern learned deſcendants of learned anceſtors. For this reaſon has the ſubject been here noticed. Lawyers thus deſcribe things not partible.

# CHAP. VI.

ON

# PARTIBLE PROPERTY.

## ECT. I.—*On the Partible Refidue after the Payment of Joint Debts.*

AFTER excepting this, *which has been mentioned in the preceding chapter, all other property is* partible.

### CCCLXVIII.

CÁTYÁYANA :—On a partition by coheirs, all the wealth left by their father, or by his father, and what they themfelves have acquired *by their joint efforts*, fhall be divided among them.

Wealth left by their paternal grandfather; property which has defcended from that anceftor through the father; or, in certain inftances, paffing by him, *and devolving immediately on the fon*: this intends generally all wealth which has defcended from anceftors. "Paternal eftate;" gained by the father himfelf. "What they themfelves have acquired:" felf is here employed in the plural fenfe; confequently, what is gained by the coheirs, through agriculture or the like, *is here meant*. So MENU, *in a text formerly cited* (LXXIII), *directs, that* there fhall be an equal divifion without any allotment in right of primogeniture. From the mention of "unlearned" in this place (LXXIII), fome argue, that if any one of them be learned, a greater portion fhall

 be

be allotted to him on account of his good qualities. But that is not right; for, when a greater allotment, in right of ſeniority by birth, is diſapproved, how ſhould a larger portion be allotted in right of pre-eminent learning? This *ſeeming difficulty* muſt therefore be thus reconciled, in conformity with the opinions of CHÁNDÉSWARA and the reſt: if one of five brothers acquire wealth by agriculture and the like, another by commerce or ſimilar means, ſome by learning, valour, and ſo forth, with ſupplies from the joint eſtate; in that caſe, the learned coheirs ſhare the wealth which is gained by agriculture or the like, but the illiterate parceners have no ſhare of what is technically called the acquiſition of ſcience: therefore is it ſaid, "being unlearned" (LXXIII). Accordingly it is obſerved by CHANDÉSWARA, on the text of GÓTAMA, that "unlearned" ſignifies deſtitute of that ſcience which renders wealth ſeveral and appropriate. But that text of GÓTAMA may be *explained as* intended to forbid the allotment in right of primogeniture. At preſent, if all the coheirs, being deſtitute of learning, acquire wealth, jointly or ſeverally, by agriculture or the like, ſince all would be entitled as acquirers to double allotments, equal partition is therefore proper, and the greater or leſs *ſhare in the* acquiſition ſhould not be inveſtigated: as is remarked by CHANDÉSWARA, 'if all the 'brothers, being unlearned, acquire wealth by agriculture or 'ſimilar means, then an equal partition ſhall be made of that pro-'perty which was not the wealth of their father; much being 'accumulated by one, it ſhall not be ſet apart in the form of a 'deducted allotment, or the like.' The ſame ſhould be underſtood in reſpect of *all* undivided coheirs, even though joint property have not been uſed.

But, according to the opinion of JÍMÚTAVÁHANA and the reſt, coheirs not inferior in learning have a right to participate in wealth which has been acquired by ſcience without the uſe of the joint property, and which is technically named the acquiſition of a ſcholar: not coheirs inferior in learning, or *abſolutely* illiterate; in contemplation of this it is ſaid, "being unlearned" (LXXIII).

"Or any thing which they themſelves have acquired," excepting that for which there is a cauſe of ſeveralty. The text (CCCLXVIII) muſt be ſo ſupplied, according to the *Retnácara*.

Confequently, the virtual fenfe of the term "felf-acquired," is, "gained by any one of the parceners."

## CCCLXIX.

CÁTYÁYANA:—After delivering what is due as a friendly gift *promifed by the father*, let the remainder be divided among the heirs: it fhall be received in order by the fons, *or other defcendants of the laft owner*, as far as the fourth degree.

Such things as have been promifed by the father in donation to any perfon are amicable prefents: after delivering thofe *promifed* gifts, the remainder fhall be divided. In anfwer to the queftion, who fhall receive fhares, the brothers, or any other perfons? the legiflator adds, "*the heritage fhall be received in order* by lineal defcendants as far as the fourth degree," conformably with the text of MENU, propounded under the head of Inheritance.

## CCCLXX.

MENU:—To three *anceftors* muft water be given at their obfequies; for three *(the father, his father, and the paternal great grandfather)* is the funeral cake ordained:—the fourth *in defcent* is the giver *of oblations* to them *and their heirs, if they die without nearer defcendants;* but the fifth has no concern *with the gift of the funeral cake.*

To three, the father, the paternal grandfather, and paternal great-grandfather, water and cakes muft be offered: it being thence deduced, that he who confers a benefit on the late owner fhall take his heritage, it is fuggefted, that the fourth in defcent from him, namely the fon's grandfon, is entitled to a fhare. Such is the opinion delivered in the *Retnácara*. Thus the meaning is, that the wealth to be divided *fhall be received, &c.* But HELÁYUDHA fays, what was promifed *fhall be received by defcendants*

*ants of the donee down to the fourth in descent*: it may be taken by any one of the lineal descendants of him to whom it was promised, down to the great-grandson: if the donee be dead, it shall be received by his son; or, in case of his death, by the son's son; or, if *all* these be deceased, by the son of the grandson. This also is founded on the text of MENU (CCCLXX).

It should be here noticed, that the thing promised, being given to any one descendant of him to whom the promise was made, shall be taken exclusively by that *one descendant*: it shall not be shared by his brother or other coheir, for it had not become the property of him to whom the promise was made; and a right is only vested in the person on whom a gift is *actually* bestowed. But if it were already given, though not delivered, then indeed, according to JIMÚTAVÁHANA, property was vested in the donee: it shall therefore be divided among his heirs. But, according to the opinion of those who affirm property to be vested by acceptance, the gift intended for the father in the mean time becoming similar to unclaimed effects, ought to be accepted indifferently by all the sons; and the single acceptance of one is therefore improper.

We resume the subject. After paying what has been promised by the father as a present (that is, what has been given by him but not delivered), and a debt contracted by him, the remainder shall be divided, as declared by NÁREDA (CXI): "To the claimants on the heritage of the father;" to those to whom gift or payment has been promised by him (CXI): so authors *expound the term*. What has been given away by the father, though not delivered, is no longer his property; partition could not therefore be supposed. But the author of the *Pracása* reads *pitrĭ dānēbhyah*, instead of *pitrĭ dāyēbhyah*: still the sense is the same, as has been remarked by CHANDESWARA.

"The debts of the father" (CXI); this is a mere instance of a general meaning: one contracted by a paternal uncle, or other person, for the support of the family, must be likewise discharged.

## CCCLXXI.

CÁTYÁYANA:—A debt contracted by a brother, a

 paternal

paternal uncle, or a mother, for the *support of the* family, muſt be fully diſcharged by the coheirs when partition is made:

2. That debt muſt be paid to the creditor; but he ſhall not exact payment when the demand is conteſted, unleſs it be proved by evidence.

If the father affirmed "the debt which has been contracted is not payable by me;" then, after his death, that debt ſhall only be paid by his ſon when it is proved by evidence, otherwiſe it ſhall not be paid. Such is the meaning *of the text* (CCCLXXI), as explained in the *Retnācara;* but if the debt be unconteſted, it muſt be paid without evidence adduced.

A debt contracted by an undivided coheir even without *the* aſſent *of parceners*, or after partition with *their* aſſent, muſt be paid (Book I, v. CLXXXI). The precept is general, including brother's ſons and the reſt.

## CCCLXXII.

The debt of his father, his own debt incurred on account of thoſe of his father, and one contracted by a parcener himſelf *for the ſupport of the family*, muſt be diſcharged *by him* jointly with his kinſmen when partition is made.

The debt of his father, though not contracted for the ſupport of the family, muſt be paid, as mentioned in the *firſt* book, On Loans (Book I, Chap. V). One incurred by a parcener himſelf on account of ſums due by his father, that is, for the payment of his father's debts, muſt be diſcharged by all the brethren when partition is made. One contracted by the parcener himſelf for the ſupport of the family, muſt be paid by all the brethren at the time of partition. Such is the interpretation, not inconſiſtent with the gloſs of Chandéswara.

CCCLXXIII.

## CCCLXXIII.

*What has been given away* for *the* religious purposes *of one individual*, a friendly gift, and *a loan* made on his sole account, shall, if discovered, become part of his allotment; *for* the patrimony cannot be aliened *by one parcener on his separate account.*

What is given away for religious purposes, that is, solely for his own religious purposes, he shall share at the time of partition; *in other words*, his share shall be made good, including in it the sum given away. So likewise in the case of a friendly gift. "And a loan made on his sole account:" for example, during coparcenary, a stranger asked a loan of one brother: he replied, "I will give it;" but the rest of the brethren forbade it, and he said, "this loan shall remain on my sole account:" in this and similar instances, a sum lent on the sole account of one parcener he shall share; *in other words*, that sum shall be included in the full share allotted to him. The reason is subjoined; "*for* the patrimony cannot be aliened:" a separate gift cannot be made out of the patrimony or joint-estate, nor an act annulling property be done. The *Calpateru.*

"If discovered;" being ascertained: this is an epithet expressing a matter of course*; for there could be no dispute among brothers concerning a matter which was not detected. Consequently, if it be concealed, there is simply a moral offence. Or joint property having been expended for a separate religious purpose, by one who *usually* disburses money for such joint uses; but *the circumstance* being accidentally forgotten, the unintentional act is no offence, any more than *the seizure of* another's property *by mistake:* to denote this, it is said, "if discovered." "A loan made" is a mere instance of a general meaning; for the law is the same in the case of sale, purchase, hypothecation, or the like.

 "For

* *Swarúpasat:* deemed almost superfluous, since it must, even though not expressed, be inferred from the "nature" of the thing spoken of: a truism, if I may use this word. T.

" For religious purposes," is also a mere illustration: for the same must be understood of wealth aliened, for gaming, for harlots, or the like.

But the author of the *Pracáśa* and the *Párijáta* thus expound the text: a debt contracted *by one parcener* for *separate* religious purposes, or *a sum borrowed and* given away through affection, or for private uses, he shall divide: borrowing money during coparcenary, a separate religious purpose has been effected; or *the sum* has been given away to any person through affection; or enjoyment, such as the wearing of delicate apparel or the like, has been therewith obtained: such debts he shall " divide;" that is, he shall remove them from any connexion with the rest of the brethren, *the term being here used* as in the example, " divide the leaf from the tree:" *in a word*, such a debt shall not be paid by the rest of the brethren; gift or payment of the debt shall not be made out of the patrimony.

CHANDÉSWARA, quoting the several opinions, adds; ' in fact ' all this is determinately meant; it is proper to explain the text ' as bearing all *these* senses.' It must be inferred, that, like an ambiguous poem, two senses are intended by the Sage; or one is expressed, and the other is deduced from parity of reasoning.

" For enjoyment;" if one parcener expend joint property for his pleasures, and permit not another brother to do so, his debt shall not be discharged, and his expenditure shall be included in his allotment; but if all expend joint-property for religious purposes, or for *sensual* gratifications, then, all having enjoyed the property, there shall be no inquiry touching the greater or less *expenditure*, any more than in the case of acquisition made by all *the parceners*. But if a dishonest coheir dissipate wealth at his pleasure for his own enjoyments or the like, and, with a view to his future justification, persuade another brother to expend a trifling sum; then, the fraudulent intent being proved, it is directed that the amount which has been dissipated by the dishonest coheir shall be charged against his share; for with him, in effect, originated the use made of the joint property by the other brother.

If one brother, going from place to place, and earning wealth, support the family; then his expenditure of joint property for the wearing of delicate apparel and other enjoyments, is *a disbursement* on the part of all *the coheirs*; and a debt contracted by him

for

for that purpose must be paid by all *of them*: on the interpretation of the *Calpateru*, is not this inconsistent with the text of CÁTYÁYANA (CCCLXXVII 4); for there is no distinction specified in regard to expenditure for *purposes* of duty, from an impulse of affection or the like? Consider that text as relating to indispensable duties, such as the investiture of a son with the mark of his class, or the like, as well as necessary consumption.

If one parcener expend joint property for his own religious purposes, the merit is *supposed to be* exclusively his own; does not this contradict the speech of VYÁSA to YUDHISHT'HIRA in the MAHÁBHÁRATA, "If thou sacrifice, O king! all will have sacrificed;" for it is there expressed that BHÍMA and the rest also partake of the religious merit? A rite performed with a view to the consequent merit of all the brethren, fulfils the duty of all; one performed with a view to the obligations of one brother, fulfils his duty only: there is consequently no discrepance. By parity of reasoning, should it not be the same in the case of sale? That is admissible.

If any one parcener, expending the joint property, acquire any wealth for himself, would it not be exclusively his own? It should not be answered, that is admissible; but the text, which allots a double share *only* to the acquirer, relates to the case where a parcener expending joint property acquires wealth intended for all the coheirs. Were it so, fraud would not be obviated: for a dishonest parcener, occupied in acquiring wealth by the expenditure of joint property, would affirm, when he afterwards finds a gain, "this was earned by me on my own sole account;" if he perceive a loss, he would say, "it was done for all *the coheirs*."

As for what is argued, that this law relates only to wealth given away for religious purposes and the like, since that only is mentioned in the text (CCCLXIII), but, in other cases, whatever is acquired by the expenditure of joint property, is common *to the parceners*; that inference is questionable: for it is irregular to establish various rules, where the reason of the law is the same: and VRÍHASPATI says, "if no decision were made according to the reason of the law, there might be a failure of justice."

On this some remark, that religious merit, wealth, or any other acquisition made by the expenditure of joint property, is

common to all the parceners; as appears from the text of MENU (XVIII), and from the ſpeech cited from the *Mahábhárata*, and from the texts of VASISHT'HA and others (CCCLVI, &c). If the reſt oppoſe one who expends joint property to accompliſh a joint buſineſs, and he perſiſt in the diſburſement, ſaying, "the expence and profit are mine;" whatever is then acquired by him, whether religious merit, wealth, or the like, belongs excluſively to him; otherwiſe it is common to the parceners. It ſhould not be objected, that ſtill there is a contradiction to reaſon: thus, if he privately, or unoppoſed, gain religious merit or the like for himſelf, how can they have a ſhare, ſince the fruit ariſing from the act is not produced *by them who were* neither intended *by the actor* nor *themſelves* agents in it? Though neither intended, nor *himſelf* the actor, the owner of the wealth which has been employed is entitled to the produce. Any one carrying on traffick with the property of another, unauthorized by him, cannot claim the gain; if he might, the holder of a depoſit, having obtained intereſt *on it by lending* the thing which was intruſted to him, could claim that intereſt as his own. In the caſe above mentioned, ſince the acquirer is an undivided coheir, and the wealth common to the parceners, there is no theft; and therefore no fine ſhall be impoſed; *an allotment*, ſuch as a double ſhare or the like, is the hire of his labour. Theſe lawyers thus reconcile the *ſeeming* contradictions.

The practice relative to ſeparate property hardly occurs in the caſe of wealth gained through the uſe of the common ſtock: but if the acquirer were oppoſed by the reſt, his acquiſition is ſeparate property. As for the argument, that, in a caſe of religious duty, the effect correſponds with the deſign: thus, rites performed by an opulent ſon for the ſake of his deceaſed father, produce benefit to the father alone; but in civil affairs it is not ſo, ſince there is no proof of this point: hence that act of religion which a man performs, though forbidden by his coheirs, is excluſively his own; but a *pecuniary* acquiſition made for himſelf belongs to all the owners of the wealth which is employed: that argument is diſputable, for a debt is alſo mentioned in this text.

Others, connecting the words "on his own ſole account," with the three terms of the text (CCCLXXIII), thus expound it; charges for a coheir's own uſe muſt be defrayed out of the patrimony. Thus, there is no inconſiſtency with the text abovenoticed (CCCLXXVII 4). What is given for *ſeparate* religious purpoſes,

purpofes, and what is beftowed through affection, are confidered as given for his own fake. In like manner, according to the opinion of the author of the *Pracáśa*, if one brother ufe the patrimony, and another, happening to be in another place, contract a debt for his fubfiftence, that ought to be paid by him who enjoys the common eftate. It is proper to connect the terms "given for religious purpofes," and "beftowed through friendfhip," with the words "on his fole account." Such being the cafe, muft not a debt incurred for his own enjoyments be paid out of the property which is held in common with another brother? It is not confiftent with the law, that money borrowed *by one parcener*, of his own accord, for any other purpofe but for the fupport of the family, fhould be repaid out of the joint property. It fhould not be objected as a confequence, that a debt incurred by him for his fubfiftence or the like would not be difcharged. The payment of fuch debts is eftablifhed by the reafon of the law. Does not the text, as interpreted by the author of the *Pracáśa*, confequently become unmeaning? No; for the fenfe of former texts is confirmed by this. But thofe *lawyers* hold, that the precept was neceffary; for it moreover propounds the feveralty of religious merit and the like gained by *the ufe of* joint property.

## SECT. II.—*On Difputed Partition.*

### ART. I.—*On the Diftribution of Effects concealed.*

### CCCLXXIV.

CÁTYÁYANA:—A houfe, arable land, or quadrupeds, difcovered *after partition to have been the property of the deceafed*, muft be divided: if it be juftly fufpected that effects are concealed, a difcovery by ordeal is prefcribed by law.

2 Thus MENU declared, that houfehold utenfils, beafts

beaſts of burden, or milch cattle, ornaments, and ſlaves, muſt be divided, when diſcovered *among the heirs;* and that, if effects are *ſuſpected to be* hidden, a diſcovery muſt be obtained by the *cóſha,* or an ordeal by drinking water in which an idol has been waſhed.

"Ordeal;" a ſolemn trial *by water:* this he explains *in the ſecond verſe.* "Houſehold utenſils;" the mortar and the reſt. "Slaves;" bondmen and other ſervants. The reſt is well known, and familiar. CHANDÉSWARA.

When ſome cauſe is ſhown for ſuſpecting that effects are concealed, then only ſhall ordeal be performed. For example; the income is great, and expence ſmall; but he who ſuperintends the receipts and diſburſements does not ſatisfactorily account for them: again; when the brethren, at the time of partition, claim a chattel previouſly ſeen, and the brother who manages *the houſehold affairs* alleges, but does not prove, its conſumption: again; the manager has acknowledged ten pieces of money, and afterward it is by ſome means diſcovered that he had eleven *ſuch* pieces in his hands: in theſe and ſimilar caſes ordeal muſt be performed. Elſe, ſince doubts may be entertained in every inſtance, partition could ſcarcely be made without it. To this opinion RAGHUNANDANA aſſents.

"*Cóſha;*" a trial by touching *or drinking* water in which *the image of* a ferocious deity has *been* bathed. The form of this *trial* muſt be ſought in treatiſes on the ſubject of Ordeal. Should more effects be diſcovered by this or other means, they ſhall only be divided: he who ſecreted them ſhall not be deprived of his ſhare, nor ſhall he be amerced; for he is not guilty of theft by ſecreting thoſe effects. This relates to the caſe when ſuſpicion ariſes at the time of partition; if it ariſe ſubſequently, MENU directs *the proceeding:*

## CCCLXXV.

MENU:—When all the debts and wealth have been juſtly diſtributed according to law, any property that

that may afterwards be difcovered fhall be fubject to a fimilar diftribution.

" Afterwards difcovered ;" fubfequently known from popular proof: afcertained, or juftly fufpected. Ordeal is not directed on *mere* fufpicion entertained in the mind of one brother after partition, without a probability of embezzlement, arifing from *circumftantial* evidence. However, fhould ordeal happen to be directed *without fufficient grounds*, but the fufpected perfon be thereupon convicted of having fecreted effects, then alfo an equal partition fhall be made. Does not this contradict the terms of the text, " any property that may be afterwards difcovered," (*paśchât driśyaté*)? No; for the verb *driś* bears the fame fenfe of " know" *as well as* " *fee*." Then ordeal would be directed on a mere fufpicion entertained in the mind *of one coheir?* No; for it can only be directed with propriety, when the king, or the umpire, after hearing the allegations of the plaintiff and defendant, fees ground for doubt. But in this cafe, the plaintiff being unable to fet forth fufficient caufe, the judge or arbitrator entertains no fufpicion *againft the defendant;* and ordeal is not therefore enjoined. Such is the principle *of the law.*

" According to law" (CCCLXXV). If the diftribution were illegal, a fecond partition muft be made, even though concealment be not alleged; but if the diftribution had been made according to law, no fecond partition fhall be granted unlefs effects were fecreted.

## CCCLXXVI.

YÁJNYAWALCYA :—When effects, fecreted by one parcener from the other, are difcovered after partition, the coheirs fhall again diftribute thofe effects in equal fhares: this is a fettled law.

Partition being fuggefted as a matter of courfe, it is intimated, by the enunciation of this text, that the crime of theft is not committed by concealing effects held in coparcenary. So HELÁYUDHA, VISWARÚPA, CHANDÉSWARA, JÍMÚTAVÁHANA, RAGHUNANDANA, and the reft.

" In

" In equal ſhares :" this is not intended to deny the right of primogeniture, but to remove the doubt whether he *(the concealer)* ſhall have a leſs ſhare, becauſe he ſecreted the effects: elſe, an elder brother, though blameleſs, would loſe his greater portion when a younger brother has embezzled any part of the property, which would be contrary to reaſon; and the ſons of a *Bráhmaní*, and of a *Cſhatriyá* wife, would have equal ſhares. This very expoſition is delivered by JÍMÚTAVÁHANA. " Equal " here intends ſuch ſhare as would have been given, had not effects been ſecreted.

## CCCLXXVII.

CÁTYÁYANA:—Recovering what has been embezzled by any one *of the coheirs*, let ſons, after the death of the father, diſtribute it equally among the brethren.

2. If the parceners have ſecreted part of the aſſets from each other, or if any miſtake has been made in the partition, on a ſubſequent diſcovery there muſt be an equal diviſion of what is reſtored: this is a law of BHRĬGU.

3. What is *ſingly* acquired by one *of the brethren* after partition, belongs excluſively to him; but let him again bring into partition what is recovered after it had been ſtolen or loſt, and that which is above mentioned.

4. Effects which a kinſman has concealed, let not a coheir *at firſt* uſe violence to make him reſtore, *but let him begin with friendly expoſtulations;* nor let a coheir be obliged to make good what he had expended *before partition for the neceſſary ſupport of his family.*

" Recovering;" obtaining: for there ſcarcely is a difference

between the ſenſe of go and obtain; the one is included in the other *.

" Secreted from each other;" if all the brothers have ſeverally ſecreted ſomething, and the whole be diſcovered after partition, this is propounded, to remove the doubt whether that which each has concealed ſhall belong excluſively to him, without diſcriminating the greater or leſs value, in like manner as in the caſe of acquiſition *ſeverally made by all the coheirs.* " Or if any miſtake has been made;" for example, if more have been given to one *than to another*, by miſtake, or *with intention* to defraud *that* other coheir, then, ſhould the exceſs be ſubſequently aſcertained, lots ſhall again be caſt; but not upon the ſimple allegation of an unfair diſtribution. Thus the text of MENU (CCLII 6) muſt be conſidered as relating to partition made according to law. The following text of VRĬHASPATI alſo relates to the ſame ſubject:

## CCCLXXVIII.

VRĬHASPATI:—Whatever ſhare is enjoyed by each, let not that be conteſted; if he ſubſequently diſpute a diſtribution, which was made with his own conſent,

2. He ſhall be compelled by the king to abide by his ſhare, or be amerced if he perſiſt in contention.

" A diſtribution made with his own conſent;" but if the plaintiff ſaid, even at the time of partition, " I will not accept this allotment," but was compelled to receive it by a partial and powerful umpire, he may obtain a ſecond partition, on ſetting forth the whole circumſtances before the king, with ſufficient proof, and on ſhowing the defect of the diſtribution. This is intimated by the text, and has been expreſsly declared by CÁTYÁYANA (CCCLXXVII 2). But if he then aſſented to the diſtribution, whether ill or well made, and now allege that an unfair diviſion took place, he ſhall be compelled by the king to abide by his ſhare; and if he perſiſt in contempt of the king's command,

* All verbs which ſignify 'to go,' alſo ſignify 'to obtain.' T.

command, and cannot ſhow the diſparity *to have been* unknown at the time of partition, he ſhall be amerced, that is, fined by the king. If he then aſſented to an unequal diſtribution, knowing the diſparity, it is unreaſonable that the inequality ſhould be now inveſtigated. RAGHUNANDANA holds, that the ſame ſenſe may be deduced from the ſingle expreſſion " made with his own conſent." His acquieſcence muſt be here underſtood to have been voluntary, not proceeding from the menaces of the umpire; for a contract, to which a man has conſented with his lips, under the impreſſion of fear or the like, is declared null (Book II, Chap. IV, v. LVIII). It ſhould not be objected, that, in the caſe of compulſion, there is no aſſent. Without will, or aſſent, there could be no determination to action.

" On a ſubſequent diſcovery, there muſt be an equal diviſion " of what is reſtored:" hence it appears, that a diſtribution of that only ſhall be made; what had been already diſtributed ſhall not be again divided. " An equal partition" *is mentioned* to remove the doubt, whether no ſhare, or a leſs allotment, ſhall be given *to the concealer*, becauſe he had ſecreted the effects.

RAGHUNANDANA.

To this ſome lawyers object, that CÁTYÁYANA has ſaid, " on " a ſubſequent diſcovery, there ſhall be an equal partition of " what is reſtored," becauſe there could be no ſecond partition, if the effects, mutually ſecreted, were not reſtored; it is not deduced from the terms of the text, that ſo much only *as is refunded* ſhall be divided. It ſhould not be anſwered, that this meaning is nevertheleſs deduced from the expreſſion " *reſtored* " on a ſubſequent diſcovery." This term is here inſerted, to remove the doubt whether coheirs ſhall divide what they had ſecreted from each other, if diſcovered at the time of partition; but not, if ſubſequently detected.

If this *objection be propoſed, the anſwer is*, No; for a ſecond partition of what has been already diſtributed is not inferred, becauſe a diviſion of what may be ſubſequently diſcovered is ordained: MENU and others do forbid *a ſecond partition;* and a diſquiſition on words, when the conſequence would be unjuſt, is nothing to the purpoſe.

" What is obtained by a divided brother, &c." (CCCLXXVII3); what is acquired after partition by the uſe of *his* ſeparate

*ſhare*

*ſhare of the* patrimony, belongs excluſively to him *who acquired it.* This declares *what was* a matter of courſe: or it means, that any thing which is gained after partition by the uſe of common property remaining to be divided, ſhall be taken by him alone *who acquired it;* one ſhare each ſhall not be allotted to the other coheirs, and two to the acquirer: however, ſomething muſt be given by him as a recompenſe for the uſe of the property; and that ſhall be regulated in proportion to the magnitude of the ſum and the labour of the man, as in the caſe of wealth acquired by one among aſſociated traders, upon the joint ſtock.

"Singly by one of the brethren after partition" (CCCLXXVII 3); connecting theſe terms, ancient authors infer, that, if wealth be acquired by coheirs before partition, even without ſupplies from the common eſtate, thoſe who contribute not to the acquiſition ſhall nevertheleſs receive ſhares. But that has been already impugned by JÍMÚTAVAHANA, becauſe VYÁSA (CX) has ordained a double ſhare for the acquirer in the caſe where the joint property has been uſed, but no legiſlator has propounded a ſpecial allotment for the caſe where it has not been employed. However, what is delivered to one, but intended for all, muſt be equally ſhared by them, becauſe all are donees; but if the gift were obtained by labour, it ſhall be unequally divided. Such is the principle of the law.

"Stolen;" (CCCLXXVII 3) taken away by thieves. "Loſt;" miſſing, being covered with earth or the like, or having been taken by a ſtranger while it was in a ſituation of a waif. "That which is above mentioned;" namely, what has been embezzled by one brother, or ſecreted by the coheirs from each other, or ill diſtributed. Theſe things ſhall be again brought into partition; theſe only ſhall be again divided, not any other things: this is a precept which recapitulates the preceding rule. The ſecond partition ſhall be made *proportionately* by a reference to other paternal wealth already diſtributed.

"Effects which a kinſman has concealed" (CCCLXXVII); joint property embezzled by him: this term is here ſecondary, for the caſe does not fall within the definition. Theft is the taking poſſeſſion of a thing which appertains ſolely to another; but theſe effects do not ſolely belong to another perſon. He ſhall

be made to reſtore them by mild expoſtulation and ſimilar means, not by violence. RAGHUNANDANA.

It may be aſked, if he reſtore them not after friendly expoſtulation or the like, may the coheir uſe compulſion or not? It ſhould not be argued, from the words of the legiſlator, "let not "a coheir uſe violence to make him reſtore," that it ſhall not *even then* be uſed. It would contradict reaſon, that puniſhment ſhould be denounced againſt him who formerly aſſented to the diſtribution, but now, thinking his allotment unequitable, deſires a ſecond partition, but does not ſeek to obtain the common property by fraud or the like, while no puniſhment is denounced againſt this man *who defrauds his coheirs*. It is ſaid, ſtill the fine is, in this caſe alſo, impoſed for diſobedience to the king's commands, or for other inſtances of contumacy, not for the ſimple act of concealment. Puniſhment is inflicted, in the preſent caſe, as on a thief, for the ſimple act of taking *the effects*.

"Let not a coheir uſe violence, but artifice or the like, to "make him reſtore *effects concealed*." The *Retnácara*.

"Nor let a coheir be obliged to make good what he had ex- "pended;" what he has conſumed more than his coheirs, before partition, he ſhall not be compelled to make good.

JÍMÚTAVÁHANA, RAGHUNANDANA, and others.

But, in fact, ſince this is mentioned under the title of Effects concealed, it ſhould be conſidered as relating to embezzlement. Conſequently, this text denies that others ſhall receive ſhares of the value of what he has conſumed out of the land, or other property, which he embezzled. Hence he ſhall not be compelled to make good the food and apparel obtained from the undivided property of ſeparated kinſmen. It ſhould not be objected, that, were it ſo, the word "coheir," or undivided kinſman (CCCLXXVII 4) would be unmeaning. They are coparceners and united kinſmen in reſpect of their ſhares in that property *which is yet undivided;* but if he conſume the ſeveral property of another, he muſt neceſſarily pay the value of what he has waſted. Nor ſhould it be objected, that the uſufruct of undivided wealth appertaining to ſeparated coheirs, but ſecreted by one parcener, muſt be made good, becauſe *the reverſe* is not expreſsly ſaid by any author, and the literal ſenſe of the text does not ſhow it. Since the uſe of joint property, appertaining to diſunited

diſunited coheirs, is no more a theft than the employment of wealth belonging to coparceners, compenſation for what is deſtroyed by uſe alone would not be proper, and ſuch is the object of inſerting that precept under the title of Effects concealed. This inference we hold reaſonable.

## CCCLXXIX.

VRĬHASPATI:—If the loan or bailment of joint property be fraudulently concealed, let the king uſe means to detect the cheat and reclaim the defrauder, but not compel him by violence to reſtore the property:

2. Thoſe crafty and covetous men who live by deception, and detain the property of others, ſhould be reclaimed by mild methods, by the loſs of their own wealth, or by artifice.

'If thoſe debts and depoſits, which are *claims* common to the parceners, be concealed;' ſuch is the meaning. The conſtruction is not, 'if joint property be ſecreted, if a debt be concealed, &c.:' for it is declared in the *firſt* book, On Loans, that force may be uſed to compel payment, if a *juſt* debt be not acknowledged *by the debtor*. 'If concealment of a loan or bailment be *made* by fraud;' ſuch is the literal conſtruction, ſo ſupplying the text. "Let the king uſe means to detect the cheat and reclaim the defrauder;" uſing means to defeat the fraud of the concealer, let the king compel reſtoration, but not by violent methods. For example, a coheir, lending money to any perſon, conceals it from his brethren, and they have made partition, but, diſcovering the fraud by ſome circumſtances, complain before the king; let not the king ſeize him and extort a confeſſion, but proceed by a circumſtantial inquiry. The form of proceeding may be this: let the king aſk him, "Is DÉVADATTA thy debtor or not?" He replies, "DÉVADATTA is not indebted to me, but to my wife's "brother;" then let the king aſk, "in what ſum, and when "lent?" and cauſe his anſwer to be noted: afterward let the



king

king call the abſent brother-in-law, and examine him on the ſum borrowed by DÉVADATTA, and on the date of the loan, and various other points. If the anſwers correſpond, let him follow another mode of inveſtigation; but if they diſagree, then, having detected the fraud, conſiſting in a falſe affirmation, let him compel reſtoration by admonition or other mild methods, or by artifice.

Or the ſenſe may be, ' if the loan or bailment of joint property be concealed, let the king compel reſtoration, either by artifice, or by adopting a proceſs which impoſes on the concealer a loſs of his own wealth.' The disjunctive particle muſt be ſupplied in the text. " Loſs of his own wealth" may be thus exemplified; let the king attach his land, or other property, until he make ſatisfaction.

" Deceivers," or men who live by deluſion, detain the wealth of others; ſuch is the meaning of the text (CCCLXXIX 2). They are crafty and covetous; for, without avarice and diſhoneſty, they would not fraudulently ſeize the property of another. They ſhould be reclaimed by mild methods, or by the loſs ſuſtained by themſelves, or by artifice.

The precepts concerning partition among brothers ſhould be alſo obſerved, with due attention to circumſtances, in partition made by a father. For inſtance, a full ſhare muſt be ſolely allotted to the ſon lawfully begotten, and either the ſhares ordained in the *Brahma purána*, or a third part, ſhall be given to the reſt; but, on failure of one lawfully begotten, a full ſhare muſt be allotted to them alſo, in the order of ſucceſſion. Of wealth not *univerſally* partible, a diſtribution ſhall be either made, or refuſed, in the mode above explained: and in like manner ſhall effects concealed *be brought into partition*. Again, if ſons have themſelves made an acquiſition during the life of the father, he ſhall have half, if the patrimony were uſed, and two ſhares, according to JÍMÚTAVÁHANA, if the common ſtock have not been employed: this has been already explained at large. But if the wealth of the brethren have been uſed, the father ſhall have two ſhares, the acquirer two, and the parceners one each, according to RAGHUNANDANA. That the acquirer ſhall have two ſhares, and the reſt one each, if joint property were employed, is deduced from the texts of VYÁSA and the reſt; but whence is a ſimilar

ſimilar allotment inferred, if the ſeveral property of the brothers have been uſed? The commentator himſelf has already ſaid, that equal partition is proper if wealth be acquired by the labour of a horſe belonging to one, and by the perſonal exertions of another. To this ſome lawyers reply, the remark ſuppoſes the caſe of an acquiſition made on wealth common to the brethren and acquirer; but, in the inſtance of ſupplies received out of ſeveral property, the father ſhall have two ſhares, under the authority of the text, and the gainer and owner a ſhare a-piece; if the acquirers be numerous, they ſhall take and divide a ſingle ſhare: ſo likewiſe if the wealth which was employed *ſeverally* belonged to many perſons; for a ſingle benefit aroſe from the uſe of all the ſums. It ſhould not be argued, that, if wealth be acquired by two brothers with ſupplies from the ſeveral * property of the reſt, they ſhall take and divide two ſhares; they ſhall not receive two a-piece: conſequently, if an acquiſition be made by a ſingle coheir, unaided by an aſſociate, he has two ſhares; but in this caſe he has in reality one only, which would be a diſcouragement to *the making of* acquiſitions with the aid of a companion. There may be encouragement from the expectation of gaining greater wealth by the exertions of two perſons than of one. Two ſhares being ordained for the father, in the caſe of an acquiſition of wealth common to the brethren, the ſame rule ſhould be alſo obſerved, *with the exceptions maintained* according to *the different* opinions *of commentators*, in the caſe of wealth acquired by ſcience. If the father maintain the family of his ſon ſtudying ſcience, what ſhall be *the diſtribution?* Since he is of courſe entitled to a double portion, there is no difference if he maintain *the family of the ſtudent*. It ſhould not be argued, that a *ſtill* greater ſhare *ought to be allotted*. The father is bound to ſupport the family of his ſon: and it is not true that thoſe of whom the maſter is entitled to ſupport from a certain perſon, are not entitled to a maintenance from the ſame perſon. If it be inferred, from the literal ſenſe of the following text of MENU, that a father is not abſolutely bound to maintain the family of his ſon, then the word

 "brother,"

* So the manuſcript; but the ſenſe manifeſtly points to the reverſe: in many ſuch inſtances, I have, with the advice of *Pandits*, corrected the obvious errors of the tranſcript, but ſhall not take that freedom in the preſent inſtance. T.

"brother," in a text above cited (CCCLVII), muſt be taken in a rigid ſenſe.

MENU declared, that a mother and a father in their old age, a virtuous wife, and an infant ſon, muſt be maintained, even though doing a hundred times that which ought not to be done *.

It ſhould not be objected, that a paternal uncle, a brother's ſon, and the reſt, would receive no ſhare of the acquiſition of ſcience, in the ſole right of having maintained the family of a learned coheir. The rights of a brother muſt be aſcribed even to a paternal uncle, a brother's ſon, and the reſt, becauſe they take *ſhares* from analogy to brothers. It ſhould be here remarked, that, if the coheir, who went to ſtudy a ſcience, maintain the family of him who ſupports his houſehold, (that family happening to reſide at the ſame place *where he ſtudies,*) no ſhare of the acquiſition of ſcience ſhall be given to him who maintains the family of the learned brother; for, in effect, there is an interchange of maintenance. Such is the inference of common ſenſe. Again; if *one receive alms from* ſome man religiouſly bountiful, *and* ſupport the families both of the ſtudent and of another parcener, he is not conſidered as one who maintains *the family of a learned coheir;* and therefore he ſhall not receive a ſhare of wealth acquired by ſcience. But if one brother only ſhare the acceptance, then the maintenance given by him is deemed in law ſupport *of the family of a learned coheir*, ſince he partakes of *any* ſin ariſing from that acceptance: it is therefore proper that he ſhould receive a ſhare *of the acquiſition.* All this relates to wealth gained before partition; but if it be acquired after a diſtribution, even a father ſhall have no ſhare of it.

ART.

* The text is quoted in Chapter VIII. as inculcating the neceſſity of maintaining theſe relatives, even by the commiſſion of offences; I have endeavoured to preſerve the ambiguity of the original. T.

## Art. II.—*On Dubious Partition.*

### CCCLXXX.

Náreda:—When coheirs have made a partition, the acts of giving and receiving cattle, grain, houses, land, household establishments, dressing victuals, religious duties, income and expences, are to be considered as separate, and as proofs of a partition *.

"Dressing victuals;" for the service of guests and the like, and for the food of the family. "Religious duties;" the aggregate of constant and occasional acts *of religion.* "Income;" acquisition. "Expences;" the gift of handfuls *of grain in charity and the like.* "When coheirs have made a partition:" this being mentioned without limitation, it is suggested that income is separate when partition has been made with the father; and this text decides the case when the fact of the distribution is questioned: hence likewise it does not relate solely to brothers; for "father and son" are mentioned in a text of Yájnyawalcya as intended to determine the case of dubious partition. These are *admitted as* proofs of a *prior* distribution, on failure of a writing or other convincing evidence; for Náreda mentions verbal proof of separate acts, after written evidence of a partition; and in every case a written document prevails *over circumstantial proof.*

### CCCLXXXI.

Náreda:—Should a doubt arise whether a legal partition have been made among heirs, it must be cleared by the testimony of their kinsmen *in the first place;* then by written evidence of a partition,

 *if*

* See V. ccclxxxvii. 2.

*if there be any; if not,* by verbal proof of their ſeparate acts.

Should a doubt ariſe concerning that in which partition conſiſts; ſhould it become a queſtion whether a diſtribution have or have not been made among heirs. The *Retnácara.*

Not whether the partition be legal *or illegal,* juſt or unjuſt; for this cannot be determined by evidence of ſeparate acts. It ſhould not be affirmed, that the laſt terms of the text ſignify 'placing in the houſe of another perſon the effects which are ſuppoſed to have been unfairly diſtributed, proceed to *inveſtigate* the buſineſs.' NÁREDA himſelf makes evident, (CCCLXXX,) the meaning of "ſeparate acts;" but verbal or written evidence may be brought to prove them.

VRĬHASPATI explains the nature of a written record of partition.

## CCCLXXXII.

VRĬHASPATI:—That record of partition which brothers, *or other coheirs,* execute after making a juſt diviſion by mutual conſent, is called the written memorial of the diſtribution.

The term "brothers" is an inſtance of a general meaning; it muſt *alſo* be underſtood of a father when partition is made by him, and of brother's ſons and the reſt. "After making a juſt diviſion:" this is a matter of courſe; for, though a writing be alſo executed when an unfair partition is made, that inſtrument is in fact unavailing. "By mutual conſent:" this intends any one of the parceners; for the conſent of all is not requiſite in *undertaking* a diſtribution. That record of partition, or writing declaratory thereof which they execute, is called the written memorial of a diſtribution. Since the letters traced on the leaf expreſs partition, the leaf itſelf, mediately by its contents, ſhows a diſtribution; or it does ſo, becauſe that and the writing are conſidered as inſeparable.

Again; ſince VRĬHASPATI calls the leaf a written memorial of the diſtribution, it is proper to write, *at the beginning of the inſtrument,*

*instrument*, " this written record of partition;" and ſince it is called an inſtrument declaratory of a diſtribution, ſuch terms ſhould be inſerted as denote partition. For example, it may be written, " I have received from you a ſum ſo and ſo, and yielded " to you ſums ſo and ſo, as a diviſion of the whole patrimony, to " which we have aſſented." The inſtrument ſhould be rendered firm, by adding " whatever ſhall be aſſerted *to the contrary* is falſe." The firſt part is ſufficient to ſhow partition, but it becomes authentic evidence by confirmation. In this document the ſeveral chattels ought to be inſerted at large, by name, as they are allotted to each of the coheirs; elſe proof of concealment in the partition would fail. There is no objection, if the inventory be written on the back of the inſtrument; but the total ſum ſhould be noted in figures, leſt ſuſpicion ariſe that effects, then concealed, have been ſubſequently inſerted. But if all the effects be enumerated in the body of the inſtrument, it is beſt. The effects ſhould be ſeparately written under the name of each brother, for it is hardly poſſible to write at once the detail of of what is received by each. The uſe of this is to aſcertain at a future time the fairneſs or unfairneſs of the diſtribution. In like manner, the additional portion which is received in right of ſeniority or the like, ſhould be inſerted under the ſeparate head of each *allotment*. This is the principal form; but, inſtead of it, the party may write ſimply, " a juſt diſtribution, made with my own conſent, has been accepted by me."

The text of YÁJNYAWALCYA, expreſſing generally " whatever contract have been concluded" (Book I, V. xvi), the ſame form ſhould be alſo obſerved in the preſent inſtance, ſince there is occaſion for it. The precept being delivered under the title of Loans, the word " lender *or owner*" is uſed: in fact, that term denotes him whom the inſtrument concerns; conſequently, as the lender is the perſon contemplated in the written contract of loan, ſo, in the preſent caſe alſo, he who is contemplated in the writing muſt be deſcribed by the ſame term; and thus the names of thoſe brothers, to whom the document is addreſſed, ſhould be firſt inſerted. Since they are in rank equal to each other, a term expreſſive of praiſe is not neceſſary; but nothing prevents the inſertion of one alluſive to memory. Again; their deſignation by the name of their father and ſo forth ought to be added, becauſe

caufe it is directed by YÁJNYAWALCYA, and becaufe it prevents a doubt concerning other fets of brethren bearing the fame names; elfe, one of fo many brothers bearing the fame appellations might produce that very document, and be cafually enabled to affirm that partition had been made between them, although it had not taken place. Again; the date of the year, month, half month, and day, ought to be inferted: and thus, what is gained fubfequently to that date, is fhown to be the acquifition of a feparated coheir; and the falfity of fuch an inftrument, forged by one capable of counterfeiting every handwriting, may be detected by proof of acts not feparately done at a time pofterior to the day and month inferted in that inftrument. The writer fhould fubfcribe his name at the foot of the document, and fubjoin the appellation of his father and other defignation, as directed by the text of YÁJNYAWALCYA (Book I, V. xviii). On the foregoing reafoning, the term debtor here fignifies the perfon who himfelf fubfcribes the inftrument, or *who executes it* through the intervention of a reprefentative. The witneffes muft fign their names, after writing the appellations of their father and other defignations: the fcribe fhould alfo fubfcribe his name. Again; a document in the handwriting of the party is fufficient evidence without witneffes; but, in fact, their atteftation ought to be taken to fuch an inftrument. The difference and the correfpondence of this, and of a written contract of loan, have been noticed. More may be eftablifhed by a fimple exertion of intellect.

The following text of VRĬHASPATI is cited by RAGHUNANDANA under this head:

## CCCLXXXIII.

VRĬHASPATI:—When a village, a field, and a garden, are recorded in the fame grant, if any part be occupied, they are all legally poffeffed.

"A grant;" a written document or the like. Thus RAGHUNANDANA. Confequently he confiders the term "grant" as fignifying a written inftrument in general. Thus, on a partition

 among

among brothers, whatever village or other land is inserted in the written record of partition, should some part thereof be occupied, and the remainder be not possessed, still the whole land is considered in law as actually possessed, not as property neglected. But if the relinquishment of it have been declared in the presence of arbitrators or the like, then, since an express declaration prevails over logical inference, it is determined by the award of arbitrators to have been abandoned.

## CCCLXXXIV.

VRIHASPATI :—In immoveable property obtained by an equitable partition, or by purchase, or inherited from the father, or received from the king, a title is gained by long possession, and lost by *silent* neglect.

2. Even in property simply obtained *with or without a fair title*, which a man has accepted and quietly possessed unmolested by another, he acquires a title; and in like manner he forfeits one by silent neglect.

Property inherited from the father, which had devolved on him from his father, or which he had *himself* gained; this is of two sorts, obtained by partition with brothers, or acquired by purchase: *in* such property of the father, obtained in these two ways, a title is *gained by possession;* and this is a general instance comprehending other wealth inherited from a parent. Or four sorts of property *are intended by the text*, obtained by equitable partition, acquired by purchase, inherited from the father, and received from the king. It should not be argued, that the mention of " property obtained by equitable partition " is useless, because that is suggested by the term " inherited from the father." It is mentioned to include what is obtained by equal partition among partners in trade and adventure. Nor should it be argued, *on the other hand*, that the term " inherited from the father " is superfluous, because that is included under " property obtained

obtained by equitable partition." It is mentioned to include the undivided patrimony. In *all* ſuch property a title is loſt by ſilent neglect. For example; four perſons, inhabiting the ſame village, any-how acquire a certain quantity of land, and, dividing it into four ſhares, execute a written document; one does not occupy the portion allotted to him by that writing, but, on the contrary, neglects it, and another holds the poſſeſſion of it: in this caſe, he who ſilently neglects his right, forfeits his title. In like manner, one who has purchaſed land, but does not take poſſeſſion of it, forfeits his title by his ſilent neglect: but he may recover the price after much diſcuſſion. Again; one inheriting wealth left by his father, does not occupy it, and another does; in that caſe it belongs excluſively to the poſſeſſor. In like manner, if a man do not occupy land or the like received from the king or other benefactor, but, on the contrary, neglect it, his title is loſt.

It ſhould not be affirmed, that the mention of loſs by ſilent neglect is uſeleſs, becauſe it follows, from declaring a title gained by poſſeſſion, that he who neglects his right forfeits his title. It is pertinent, as it ſhows this conſequence, that, if property obtained by a juſt partition be fortuitouſly unoccupied, but not *groſsly* neglected, the title is not loſt. Is it, or is it not, requiſite that the property ſhould have been unpoſſeſſed during the period of twenty years, which is propounded by YÁJNYAWALCYA? It is anſwered, *undiſturbed* poſſeſſion without ownerſhip during twenty years, not the owner's want of poſſeſſion, is propounded by YÁJNYAWALCYA as the legal preſcription by the ſilent neglect of the owner: thus the period propounded is that in which a notorious fair title is forfeited; but, in the preſent caſe, ſilent neglect precludes proof of the title. It ſhould not be argued, that a right is veſted immediately after purchaſe or the like, and is in this caſe loſt by neglect. Were it ſo, nothing could prevent a reference to the period of twenty years becoming requiſite; but, in the preſent inſtance, it is inferred, that a notorious title does not exiſt, becauſe a doubt may be entertained whether the partition was not diſapproved; or whether the heir has not given up his ſhare to a coheir, and accepted elſewhere an allotment, which he enjoys; or whether he has not given away his ſhare to ſome ſtranger; or, in the caſe of purchaſe, whether he did or did not aſſent to the bargain; or, in the inſtance of paternal wealth, whether

ther the father did or did not give it to the present possessor; or, in the case of a present received from the king, whether the royal donation was accepted or not. Hence there is no reference to the period of twenty years; but the true meaning is, that his title is lost then only when he has not taken possession, though healthful, able to occupy the land, and unopposed by any other claim besides that existing donation.

If many villages or other tracts of land be specified in the same writing, the possession of a part is, in law, possession of the whole, as declared by VRĬHASPATI. In the case of wealth received from the king, there are other points to be considered. "In property simply obtained, *which a man enjoys* unmolested by another, he acquires a title;" but if any one contested it when possession was first taken, occupancy, without refuting that claim, is not sufficient *to establish a right*. Hence, a fair title in uncontested property being gained by single occupancy, in the presence of superior power or the like, and during the government of a king, *from whom redress might have been obtained*, and that title becoming known to many persons, its forfeiture cannot afterwards be inferred without a sufficient cause, such as gift, sale, barter, adverse possession during twenty years, and the like. Consequently, after the period of occupancy, a written document, with possession during some short time, is sufficient evidence *of a title;* before that period elapse, the writing is singly sufficient proof; even after it has elapsed, a written document is evidence, provided the party were precluded from taking possession, by sickness, by absence in a foreign country, or by any other sufficient cause: *these are evidence of a right*, so long as the adversary do not bring proof that no fair title existed. Hence it is suggested, that writings and the rest are not *in general* sufficient evidence *unsupported by proof of possession or of a fair title.*

In the text of NÁREDA (CCCLXXXI), "by kinsmen" is exhibited in the third case denoting an epithet; consequently the meaning is, "by a written memorial of partition attested by kinsmen as witnesses." It is accordingly said by JÍMÚTAVÁHANA, they are here mentioned, intending that, on failure of them, the attestation of other witnesses should be taken. As the evidence of persons similar in class and profession to the plaintiff and defendant is preferred, but others may be examined in the second

instance,

inſtance, *or on failure of ſuch;* ſo, in a diſpute concerning partition, the evidence of kinſmen is required in the firſt inſtance, and the teſtimony of others in the ſecond, or in their default. If a record of partition, atteſted by others than kinſmen, be produced, the king ſhould therefore aſk the reaſon why they were not made witneſſes; and if the plaintiff cannot allege a *ſufficient* cauſe, a doubt ariſes on the authenticity of the document. But CHANDÉSWARA ſays diſtinctly, "it muſt be cleared by the evidence of witneſſes." The term *(jnyâti)* is expounded, in the *Vivâda Chintâmeni*, perſons who ſaw the partition. According to theſe two commentaries, it is only ſuggeſted, by that term, that the doubt muſt be cleared by the evidence of witneſſes. There is no objection to a ſimilar expoſition on the gloſs of JÍMÚTAVÁHANA. But, in fact, it is declared, that written evidence prevails over mere verbal teſtimony: according to the obſervation of JÍMÚTAVÁHANA, ſince a writing prevails over mere verbal evidence, the prior mention of witneſſes is incongruous. Again; if kinſmen, not named in the atteſtation of a written document, are preferable, they muſt ſurely be preferred when they are named in ſuch a document. A writing, atteſted by them, is *the* beſt *proof;* on failure of that, *an inſtrument* atteſted by other witneſſes; in default thereof, mere verbal teſtimony; on failure of this again, evidence of ſeparate acts: ſuch briefly is the order of proof.

The term *(jnyâti)* being expounded, in the *Vivâda Chintâmeni*, a perſon who ſaw the partition, *it* follows, *that* the evidence of kinſmen and others *is meant*. Still the preference of them above others muſt be deduced from the text of SANC'HA (CCCLXXXVI). It ſhould not be objected, that, from the coincidence *of the precepts*, near kinſmen muſt be underſtood by the term *jnyâti*. Were it ſo, a diſparagement to NÁREDA would occur; to obviate which, it is neceſſary to acknowledge that the word bears a general import. The admiſſion of a ſecondary ſenſe is proper, but the order of evidence is deduced from reaſoning. Such is the opinion *of the commentator*.

## CCCLXXXV.

YÁJNYAWALCYA:—A partition being denied, let the

the truth of it be aſcertained by the evidence *firſt* of near kinſmen; *then* of relations more diſtant; then of witneſſes *who are unconnected with the parties; then* by written proof, or by ſeparate acts of ownerſhip in houſe or field.

Firſt, kinſmen, within the degree of *ſapindas;* on failure of ſuch, any perſons connected with the parties, as ſuggeſted by the general term relations; in their default, ſtrangers alſo may be witneſſes. JÍMÚTAVÁHANA.

Conſequently, witneſſes of three deſcriptions, and written proof, being ſeparately mentioned, the evidence of perſons who ſaw the partition, though not named in a written inſtrument, is ſhown to be ſufficient proof, in order *as enumerated.* In *the evidence of* near and diſtant kinſmen, and *of* ſtrangers, inferiority is intimated, in order as they are named; elſe they would not have been ſeparately mentioned. Such is the opinion of JÍMÚTAVÁHANA. "Separate" *(yautaca);* diſtinct, agreeably to the ſenſe of the verb *yu*, mix or unmix: *the meaning* conſequently *is*, by *unmixt or* ſeparate *acts of ownerſhip in* houſe and field. The commentary on the *Dravyabháſhya* explains *yu* as ſignifying to unmix. But others explain the term according to the *literal* ſenſe of the verb *yu* to mix: coparcenary is therefore inferred from mixt *or joint acts of ownerſhip in* houſes and fields, on the part of the undivided coheirs; and converſely, ſeparation *of coheirs is inferred from ſeparate acts.* Such is the meaning according to theſe lawyers.

## CCCLXXXVI.

SANC'HA:—A doubt having ariſen on the queſtion whether a family has been divided nor not, and the nearer kinſmen being unable to anſwer it from their own knowledge, the more diſtant relations ought to be witneſſes.

If it be unknown to the nearer kinſmen, the family *(cula)* or more diſtant relations may give teſtimony, not an unconnected perſon;

perſon; but if it be unknown to the diſtant relations, any other may be witneſs. Accordingly, kinſmen, being chiefly required, are alone mentioned by NÁREDA. JÍMÚTAVÁHANA ſo comments on the text; for YÁJNYAWALCYA notices the evidence of diſtant kinſmen, and of other witneſſes.

The word family *(cula)* having been explained by ancient authors as ſignifying the fourth houſe, *or the vicinage*, ſome lawyers hold that by this term are meant the neighbours. Conſequently, diſtant relations are ſuggeſted by the conjunctive particle ſubjoined to "nearer kinſmen." On failure of ſuch, the neighbours, ſuggeſted by a term ſignifying the vicinage, *may be witneſſes:* in their default, any others may give evidence. Or elſe, ſince the Dictionary of AMERA makes *cula* ſynonimous with genus, or multitude of beings of the ſame kind, this term may ſignify *peers or* perſons ſimilar by claſs and profeſſion: on failure of ſuch, the evidence of others who, though diſſimilar, are approved by Sages treating of adminiſtrative juſtice, muſt of courſe be admitted. It ſhould be here remarked, that, the king and his officers being ſuperior in power to all others, an inſtrument, executed in their preſence, and atteſted by them, is moſt authentic.

"Whether a family has been divided or not:" on the ſubject of a diſtribution of wealth which has been inherited by a family, and of which a diſtribution is to be made, and on a doubt whether partition have or have not been made, *kinſmen ought to be witneſſes.*

RAGHUNANDANA.

He is a ſharer with the family who obtains partition from them, or who claims the heritage, or a diſtribution of it. A doubt ariſing on this matter, *kinſmen ought to be witneſſes.* Conſequently the ſenſe in effect is, *they ought to be witneſſes* if a doubt ariſe concerning the diſtribution of a heritage: and that may be of two ſorts, on the queſtion whether partition have taken place, and whether the diſtribution be equitable or not. Such is the meaning of RAGHUNANDANA. It is proper, becauſe near kinſmen beſt know the fairneſs or unfairneſs of the diſtribution.

NÁREDA himſelf explains the ſubject, to which he alludes, in ſaying, "it muſt be cleared by verbal evidence of ſeparate acts."

CCCLXXXVII.

## CCCLXXXVII.

NÁREDA :—Of undivided brethren the religious duty is ſingle, but after partition ſuch duties are ſeparately fulfilled.

2. When coheirs have made a diſtribution, the acts of giving and receiving cattle, grain, houſes, land, houſehold eſtabliſhments, dreſſing victuals, religious duties, income and expences, are to be conſidered as ſeparate and (converſely) as proofs of partition.

3. After ſeparation, but not before it, brothers may become witneſſes or ſureties for each other, and may reciprocally give and receive *preſents, or make contracts with each other: but, in regard to property ſeparately acquired, they may do ſo even before partition.*

4. Thoſe by whom ſuch acts are publickly done with their own ſeparate property, let men conſider as divided, even without written evidence *.

Intending to declare *reciprocal* gifts, and ſimilar acts, to be proofs of partition, the legiſlator firſt propounds, in the form of a precept, the *firſt* verſe (CCCLXXXVII 1), to obviate doubt when religious duties which fall within the deſcription of ſuch acts are proved. The doubt may be thus exemplified: if all the brothers ſucceeding to the wealth of a deceaſed father muſt, though undivided, ſeverally perform the acts appertaining to the order of a houſekeeper and to the worſhip of deities, as they muſt ſeverally perform the oblations at noon and twilight; or if they may with propriety unite for the performance of a ſingle act of religion, though divided; then the doubt, whether partition has or has not been made, would not be cleared by the joint or ſepa-



* Two of theſe verſes have been already cited apart from the context; V. ccclxxx, and Book I, V. cxli. T.

rate performance of duties: but now, ſince undivided brethren are alone commanded to participate in ſingle acts of duty, and diſunited brothers to perform ſuch offices ſeverally, that doubt is cleared. Thoſe acts, appertaining to the order of a houſekeeper, which are jointly performed even by ſeparated coheirs, are not meant in the text of NÁREDA. Theſe are voluntary rites, namely, a ſacrifice, the conſecration of a pool, or the like; for it is univerſally held that brothers, though united, may ſeverally do ſuch acts, in like manner as others may perform them jointly or ſeverally. It will indeed be mentioned, that even a huſband and wife may ſeparately do ſuch acts. Neither are conſtant duties, ſuch as oblations at noon and twilight, *intended by* the text; for the conſequence of fulfilling or omitting ſuch duties is pronounced peculiar to the *individual* perſon. Conſequently thoſe acts muſt be underſtood, by the omiſſion of which there accrues evil relative to the order of a houſekeeper, ſuch as loſs of wealth or the like, or by the performance of which there accrues good relative to the ſame *ſecular* order, ſuch as increaſe of wealth and the reſt. *It muſt be* likewiſe *underſtood* of the double and ſingle ſets of oblations to anceſtors, and ſo forth. It would be vain to expatiate.

"Religious duty" is explained by CHANDÉSWARA and VÁCHESPATI MISRA, as ſignifying the oblation to the aſſembled gods and the like. Under the term "and the like" is comprehended the ſervice of gueſts, and ſimilar offices.

"Acts of giving and receiving;" without conſulting each other: purchaſe of "cattle," or ſimilar things: raiſing "grain:" ſeparate "field," or acceptance of mortgage or the like: "dreſſing victuals, and religious duties;" the double ſet of oblations and the reſt: "income;" the acquiſition of means of ſubſiſtence and ſo forth: "expences;" the alienation of wealth: *all theſe are proofs of partition.* Thus MISRA. According to his opinion, the firſt verſe (CCCLXXXVII 1) is not a precept, but ſolely intended to ſhow that *ſeparate* acts of religion are proofs of partition. This opinion is accurate. But ſome explain "grain," as ſignifying the ſale of corn, ſuch as rice *or the like* for food.

Thus, if one coheir be witneſs or ſurety for a loan advanced, or other contract made by another, or if one receive a preſent given by the other, they muſt be conſidered, in reſpect of each other, as divided coheirs. MISRA.

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This is alſo declared in the text of YÁJNYAWALCYA; "by ſeparate acts of ownerſhip in houſe or field" (CCCLXXXV). Are thoſe acts ſeverally or conjunctly proofs of partition? If it be anſwered, each is ſufficient proof; then partition is eſtabliſhed even by the ſimple acquiſition of wealth: and if this be deemed admiſſible, the text which forbids the diviſion of wealth acquired by a parcener without uſing the joint-property (CCCLIV 2) would be unmeaning, ſince a gain made by a coheir before partition on his ſole account could not be ſuppoſed. It ſhould not be objected, that *acquiſition* is not proof *of a prior diſtribution*, becauſe it is reſiſted by the actual notoriety of the reverſe. Were it ſo, it might be ſuppoſed to be no proof of partition *in any circumſtances*, becauſe a ſeparate acquiſition may be made even without a previous diſtribution. That without which another thing may exiſt, can be no proof of it; were it ſo, *the fact*, that the animal is a biped, would prove that he is a *Bráhmana*. It ſhould not be argued, that the word "ſeparate" conveys the denial of a common gain. That cannot be affirmed by a dilemma; for what can the dilemma be in ſuch a denial? Is it that a joint acquiſition ſometimes has not taken place, or has not hitherto occurred? The firſt cannot be affirmed; for, even during coparcenary, a common gain occaſionally does not take place whilſt the parcener is aſleep, or eating, or buſy in making an acquiſition for his ſole benefit: it cannot become proof, ſince partition had not really been made at that time. The ſecond alſo cannot be affirmed; for a common gain may take place at ſome *future* time. It ſhould not be argued, that the want of proof of a ſubſequent joint acquiſition is meant. That could be no evidence at the moment when partition is queſtioned. To this it is anſwered, theſe acts ſeverally become proofs of a prior diſtribution. For example; the ſeparate acquiſition of property with the aid of paternal wealth, other than what may have been received through the favour of the father, is proof of partition; and ſo is a gift of paternal wealth, made in the preſence of a coheir without his aſſent, or the receipt of rent paid by villagers at the ſame time with a ſimilar receipt of rent from them by a coheir. The like may alſo be inferred in other caſes, by a ſimple exertion of intellect.

The purchaſe of cattle, with wealth inherited from the father, may be proof of total ſeparation in reſpect of cattle inherited

 from

from him: food prepared in diſtinct places *is evidence of ſeparation;* and ſo is the purchaſe of rice or other articles, the price of which is ſeparately paid *by each purchaſer* out of wealth inherited from the father. But, when it is obſerved that undivided coheirs having large families, and perceiving inconvenience in preparing their food together, dreſs their victuals apart, that ſeparate cookery is merely intended for their own convenience: but preparation *of grain* for oblations to deities, for the entertainment of gueſts, for the ſupport of ſervants, is not in that caſe ſeparate. Would not the diſtinct preparation of food be no proof of partition among coheirs, who, though diſunited, perform the worſhip of deities, and other offices, out of joint property ſet apart for that purpoſe? This queſtion is anſwered by aſking, what difficulty follows, ſince the partition may be proved by other ſeparate acts? Accordingly they are likewiſe propounded; elſe, ſince the preparation of food is neceſſary for all, that ſingle proof might be *always* brought, and the mention of "acts of giving and receiving" would be therefore ſuperfluous. But, in fact, they only are divided coheirs who dreſs victuals ſeparately, (and without conſulting any other,) for all purpoſes common *to undivided coheirs*, for their families, connexions, gueſts, and the like: they only ought to perform ſeparate acts of religion. Accordingly, ſince the following text, after having declared ſingle the performance of religious duties among parceners living together and partaking of the ſame food, pronounces it ſeparate among diſunited coheirs, *therefore* ſeparation in reſpect of food is exhibited as conſtituting partition. Hence, although the remainder of an eſtate may be undivided, it is not conſidered as proof that partition has not taken place; for it frequently happens that diſunited coheirs have joint property.

## CCCLXXXVIII.

Among coheirs living together and partaking of the ſame food, due honour ſhown to a *deceaſed* father, to deities, and to prieſts, ſhall be ſingle; but, after partition, that ſhall be *done* in their ſeveral houſes.

What then is the meaning of the term "partition?" This queſtion might be propoſed, and is thus anſwered; for it does not mean

mean division of the patrimony, since it would follow, that no partition could take place among those who are destitute of inherited wealth. Does it not mean the division of any property whatsoever? Accordingly YÁJNYAWALCYA has said, "one who is able to earn a livelihood, and claims not a share of the joint property, may be disunited from the family, on giving him some trifle as a consideration to prevent future strife" (CVI); and there can be no necessity of separate acts of religion without partition. *It bears* not *that meaning;* for it might be supposed that no separation could take place between those who have no property whatsoever. Consequently, the meaning of partition is separation in respect of food prepared for the entertainment of guests and relatives, and for other purposes which are common *among united coheirs.* How then can separation take place between those who are not visited by relatives or guests? Distinct preparation of food, after an agreement in these words, "henceforward we are disunited," is partition. Afterwards their acts of religion, and wealth or the like received on some consideration relative to the father, are separate; before that agreement they are single. It should not be objected, that, since partition may be proved by the separate preparation of food, the mention of other proofs is vain: if such dressing of victuals alone constitute partition, it is proved by the declaration of the parties; to mention it again, as evidence of a separation, is in a manner absurd. Since the term denotes the distinct preparation of food after *a declared* intention *of living disunited,* a dispute may arise in a case of doubt whether such a declaration was made: and, in that case, the previous agreement is in some instances proved by the sole evidence of *separate* preparation of food; but, in others, it is more fully established by the several acquisition *of wealth* or the like, by evidence of double acts of religion, by purchase *separately* made, and the like.

Brethren cannot become sureties nor give evidence for each other, nor make nor receive mutual loans (Book I, V. cxl). What is propounded by NÁREDA (CCCLXXXVII), signifies that they should reciprocally shun the gift and receipt of presents on spiritual considerations, out of joint property; the mutual connexion consists in avoiding such acts: but it is not the meaning that they must reciprocally shun giving evidence or the like; for

any one coheir muſt avoid bearing teſtimony *for another*. The text (Book I, v. CXL) had been delivered by YÁJNYAWALCYA under the title of Sureties; it is conſequently a prohibitory precept. The denial of legal evidence, and the reſt, therefore indicates coparcenary; teſtimony given *by one for another*, and ſo forth, indicates partition.

One parcener gives a common chattel to another, who accepts it, thinking, "let him now give it; hereafter his ſhare will be ſo much the leſs, becauſe he has relinquiſhed this on a religious conſideration for his own ſole account:" ſince partition has not actually taken place in this inſtance, the gift would not be proof of ſeparation. If to this it be anſwered, that which ought not to be done (for the gift of joint property, to a ſharer of it, is forbidden by the law), has been done through ignorance; *we rejoin*, this muſt be called by ſome other name, for in fact ſuch an ignorant perſon is ſcarcely found at this day.

The words "give and receive" likewiſe denote ſale and purchaſe, or other contracts. This ſhould be noticed. Partition of that property only in regard to which evidence has been given is proved *by this circumſtance*. But, on the ſubject of ſlander, violence, or the like, there is no offence in a brother giving evidence and ſo forth, although he be an undivided parcener. However, kinſmen ſhould not be made witneſſes, that being prohibited by the following and by ſimilar precepts: "a kinſman might ſpeak under the influence of partial affection." But MISRA obſerves, it is not the practice for parceners to become ſureties for each other, and ſo forth, before their ſeparation.

Since partition between huſband and wife is impoſſible under the text of 'APASTAMBA (LXXXIX), it is implied, *that they cannot give evidence for each other*; elſe, all being alike, the ſeparate mention of huſband and wife would be uſeleſs. "Before partition" (Book I, v. CXI) is therefore unmeaning in this inſtance. It ſhould not be argued, that the term is uſed to authoriſe the gift or alienation of female property, becauſe a wife is independent in regard to ſuch poſſeſſions; and thus the gift or alienation of that which has been acquired by perſonal labour or ſimilar means is prohibited. Still there is no argument to prove partition with her. Nor ſhould it be aſſerted, that the text of MENU (Book II, Chap. IV, v. LVI) furniſhes the argument, becauſe

becauſe that ſhows the property of the huſband in wealth acquired by the wife herſelf. It does not ſhow coparcenary; for, if the text be taken in a literal ſenſe, the huſband alone has the property: were it even admitted, the term "undivided" would be ſuperfluous, ſo far as relates to the huſband.

When this difficulty is propoſed, ſome lawyers reply, it muſt not be referred to that word, becauſe it is a rule that an epithet is not pertinent if it be poſſibly incompatible. Others deduce from the text which declares property common to the married pair, that a wife has an intereſt in the wealth of her lord; but, her title being inferior to his, a gift or alienation made by her is forbidden: partition with a wife may take place under the text of YÁJNYAWALCYA (LXXXIII); for the precept of 'APASTAMBA, denying partition, is directly contradicted by YÁJNYAWALCYA. From the ſequel of the text of 'APASTAMBA, it appears that he denies partition or ſeparation in acts relative to the nuptial fire, in maintaining the *ſacrificial* fire for one who has a conſecrated hearth, and in acts of religion appertaining thereto; he does not deny partition in reſpect of wealth. It ſhould not be argued, that a diſtribution of chattels is denied by another text of 'APASTAMBA (LXXXIX). YÁJNYAWALCYA declares partition in expreſs terms; but that law merely implies, that a wife has property in the wealth of her huſband: accordingly the text laſt cited is pertinent, as it explains the reaſon of the *former* precept; for the act of expending ſuch wealth demonſtrates ownerſhip, not the impoſſibility of partition in reſpect of it: and thus the worſhip of GOD, and other duties, to be performed in common with a wife, while remaining in the order of a houſekeeper, muſt be practiſed by her after partition; but the whole circle of acts relative to the nuptial fire can only be then performed in concert with her lord. It ſhould be again noticed in this place, that wealth acquired by the wife through perſonal labour, and what has been received from the family of the father, mother, and huſband, or any one of them, ſhe muſt ſhare with her lord, under a text above cited (Book II, Chap. IV, v. LVI); but his other wives and his ſons have no participation of it, becauſe the right of the huſband is ſubordinate to that of the wife.

Since the man has the ſole property of wealth appertaining to his wife, as ſhown by the text above cited (Book II, Chap. IV, v. LVI),

v. LVI), are not his heirs entitled to her ſucceſſion? It ſhould not be anſwered, her incapacity for poſſeſſing excluſive property bears alluſion to her dependence; for it is univerſally admitted, that ſhe is capable of acts preſcribed by the *Véda*, which are defrayed out of her own property. Since a ſlave, like a wife and a ſon, is, by parity of reaſoning, independent in regard to wealth received through favour, the acts of religion preſcribed by the *Vēda* may be accompliſhed with that alone. Nor ſhould it be argued, that their right to their own acquired wealth is proved, becauſe acquiſition is ſhown by the expreſſion "wealth which they may earn," and becauſe that is an act of which property is the fruit. There is no objection to the deveſture of their right after veſting property in the huſband and the reſt; and it may be affirmed, that a right ſo accruing to their maſter, huſband, or father, is the effect produced by their acts, of which property is the fruit.

To the queſtion propoſed the anſwer is, the dominion of the huſband over any thing, not technically denominated the excluſive property of women, is propounded in the text of CÁTYÁYANA (CCCCLXX), but not his ſolè dominion; and that only ſhows her ſubjection, becauſe it was received through her connexion with a living huſband. Again, the phraſe "three perſons are declared to have no wealth" ſignifies, that they have no independent property: it cannot be affirmed, in the literal ſenſe of the phraſe, that a woman has no wealth belonging to her; ſince the exiſtence of female property, and the right of the wife over the eſtate of her lord, oppoſe the *abſolute* negation of *all* connexion with property. Accordingly RAGHUNANDANA and others have juſtly ſaid, other ſons ſhall have ſhares of that which is acquired without the uſe of the patrimony, by one whoſe father is living. Again, on the death of a wife, even though ſhe leave a ſon or other deſcendant, her huſband, not her ſon or other lineal heir, ſucceeds to the wealth acquired by arts, *ſuch as painting or ſpinning;* for he had ownerſhip thereof, even while ſhe was alive.

According to the opinion of thoſe who affirm, that, becauſe a wife has an intereſt in the eſtate of her living lord, (under the text which declares wealth common to the married pair,) therefore, after the death of the huſband, his ſon, or other heir, and

his

his wife, have property ſimilar to that which he enjoyed, does it not follow, that a ſon, or other heir, has, in like manner, property ſimilar to her's, in her wealth, after her demiſe? This ſhould not be deemed admiſſible; for it is ſhown, that ſons and the reſt have only a title in what is technically named the property of women, and no one has propounded the right of a ſon, or other deſcendant, to ſuch wealth belonging to a woman, *which ſhe acquired by labour or ſimilar means*. If this be alleged, the queſtion being propoſed, who then ſhall inherit ſuch wealth belonging to a woman, ſince legiſlators have not ordained the ſucceſſion of the ſon or other deſcendant? it is anſwered, her huſband, being her maſter, ſhall alone ſucceed; but if he die firſt, the offspring of the woman ſhall inherit, as neareſt of kin, conformably with reaſon. In like manner, the title of a wife in the wealth of her huſband, which ariſes ſolely from *their* marriage, expiring on her death, the offspring of the huſband ſhall alone ſucceed, by a text which ſhall be cited (CCCCLXXVII 2). It ſhould not be argued, that the precept relates only to property devolving on remote, in default of near, heirs. That text relates to wealth, of which the property is veſted by right of affinity. Theſe lawyers thus briefly reconcile the difficulty.

But, *noticing this objection*, 'as for the right of a wife, it is declared that ſhe has property in the wealth of her huſband; ſhe might therefore claim partition with him: but, *were it ſo*, partition, not the prohibition of it, would be denoted by the terms of the text' (LXXXIII); Misra replies, "No; for ſhe is declared to have no property" (Book III, Ch. I, v. LI). The right of the wife relates not to ſucceſſion, but to ſacrifice only, her title being juſtified by co-operation: it does not contradict the fact of her having no wealth, for that cannot be diſproved by mere reaſoning. But partition may take place between huſband and wife, under the text above cited (LXXXIII), as is obſerved in the *Retnácara*.

It is the opinion of the objector, that partition might be claimed from her huſband by the wife ſingly, without its being made with ſons, becauſe ſhe has an intereſt in the eſtate. But the author ſtates, as the opinion of the *Retnácara*, that partition may take place with a wife, as with ſons, without a *previous* title. To this ſome lawyers object the capacity of a wife to poſſeſs wealth;

wealth; for ſhe does actually poſſeſs that which is technically named female property: hence the phraſe, "they have no wealth excluſively their own," does not determinately ſignify that ſhe is deſtitute of connexion with property, but ſuggeſts a right accruing to her lord through the acquiſition made by the wife; for it coincides with the text of MENU, "the wealth which they may earn is acquired for the man to whom they belong" (Book III, Ch. I, v. LII); and, in this inſtance, his right does not ariſe from acquiſition, but from connexion. Yet, if the phraſe, "they have no wealth excluſively their own," ſignify, they are not independent in regard to their own acquired property; or, if it ſignify, they are deſtitute of connexion with that which has been earned by themſelves; then the right of the wife over the eſtate of her huſband is uncontradicted. There is no authority for limiting her title.

But RAGHUNANDANA affirms, that the denial of partition, propounded by 'APASTAMBA, is underſtood generally. Hence this meaning is deduced; a wife cannot, like a ſon or brother, claim it in her own right. The ſpecial law, delivered by YÁJNYAWALCYA, contradicting that *general precept*, ſhows partition with a wife, at the ſame time with a diſtribution made among ſons. Again, ſince it would not be forbidden, unleſs it could have been ſuppoſed, RAGHUNANDANA admits the property of the wife in the wealth of her huſband, as the ground on which it might have been ſuppoſed. This ſhould be thoroughly examined: were it ſo, the mother of an only ſon might claim partition with him, in her own right; but there is no difficulty, if it be admitted that ſhe who has a ſon has no property in the wealth of her deceaſed huſband, and conſequently that partition could not *in this caſe* be ſuppoſed.

Others thus explain the text of 'APASTAMBA: there is no partition between huſband and wife in reſpect of acts of religion, nor in regard to the receipt of wealth; there is no ſuch diſtinction as the following, "this chattel belongs to him, not to his wife." But the diviſion of property is not *here* intended by the term partition: it ſignifies the diſunion of perſons; and the text denies ſuch ſeparation, for it coincides with another which deſcribes the wife as half the body of her huſband, and thus ſhe has an univerſal right to his wealth and ſo forth. By a ſpecial

text,

text, the huſband has no title to *that which is technically denominated* the property of women; but the ſhare which is given to her when partition is made among ſons, belongs to both *huſband and wife*, for it is different from the peculiar property of a woman. It muſt, however, be eſtabliſhed, on *arguments derived from* common ſenſe, that ſhe has ſome independent power over it: but partition is only granted for convenience; ſhe, who is one perſon with himſelf, can never be truly divided from him. Such is the modern mode of interpretation, following the opinion of VIJNYÁNÉSWARA.

Since the text of APASTAMBA alſo forbids the ſeparate acceptance of wealth, partition between huſband and wife is not acknowledged: as for the allotment of a ſhare, as propounded by YÁJNYAWALCYA, its full ſenſe is the reſervation of a portion out of his own patrimony, on account of his wife, *and which portion ſhould be* exactly equal to the ſhare of a ſon. Thus the term "before partition," *or undivided,* muſt be conſidered as an epithet expreſſing a matter of courſe, ſo far as it relates to the married pair. Authors thus expound the law. This brief explanation may ſuffice.

## CCCLXXXIX.

VRĬHASPATI:—A violent crime, immoveable property, a bailment, and a former partition, muſt be aſcertained by juſt inference, if neither written nor oral evidence exiſt:

2. A forcible attempt, a mark, and an inſtrument of offence, are *preſumptive* proofs of violent crimes; poſſeſſion of immoveable property is proof of a title; and ſeparate wealth, of partition:

3. They whoſe income, expences, and wealth are ſeparate, who reciprocally lend money at intereſt, and who make commercial bargains with each other, are doubtleſs diſunited.

If there be neither writing nor witneſs to prove a violent crime,

crime, or any other of the four matters *mentioned in the text*, it muſt be aſcertained by juſt inference. The legiſlator ſubjoins the *grounds of* preſumption in the caſe of a violent crime: "a forcible attempt;" the uſe of force as the means of killing or the like: he who, before the homicide, made an attempt to ſlay *the deceaſed*, may be juſtly ſuſpected of the murder. So in other caſes. This, and "a mark" or token, and "a weapon of offence" or armed bludgeon, are three *preſumptive* proofs of violent crimes. The poſſeſſion of landed property is *a ſimilar* argument *of a fair title:* the exceptions relative to this ſubject ſhould be ſought under the title of Adminiſtrative juſtice. In the caſe of bailment, the former acknowledgment, and the renewal of a depoſit, or any ſimilar circumſtance, ſhould be conſidered as a ſtrong ground *of ſuſpicion.* In reſpect of partition, ſeparate wealth is *preſumptive* proof: having made this a general inſtance, the legiſlator himſelf explains it in the third verſe; thoſe *coheirs* whoſe income, expences, and wealth are ſeparate, who ſeverally acquire property, and make diſtinct gifts and ſeparate bailments of their effects, are diſunited. Again, they who mutually lend money at intereſt, (who reciprocally give and receive loans,) and thoſe who make commercial bargains with each other, (who tranſact purchaſe and ſale the one with the other,) are diſunited: all this relates to wealth inherited from the father or other anceſtor.

If coheirs, living together, and partaking of the ſame food, do ſuch acts with the patrimony, it is *nevertheleſs* admitted that they are undivided: hence commercial tranſactions *with each other*, and the like, can be no proof of partition. If this be alleged, the anſwer is, then wealth acquired upon the divided patrimony, but without ſeparation in regard to food, would belong to all the coheirs; for the ſeparate preparation of victuals has been already mentioned as the meaning of the term partition. In a doubt reſpecting a prior diſtribution among thoſe who ſeverally tranſact commercial affairs and the like, but without having ſeparated their preparation of food by a previous agreement, what is the rule of deciſion if the diſpute concern that property to which the tranſactions relate? Deduce the principle *of deciſion* from reciprocal gift and receipt; for, *in that caſe*, donation, which is an act *done* for a ſpiritual end, has been made in contemplation of

abundant

abundant fruit *from liberality to a kinſman.* Again, the people know whether theſe coheirs have ſeparated their *preparation of* food by previous agreement or not. Again, do the peaſants deliver to them, ſeverally, the proviſions and other dues from their village? Hence alſo a principle of deciſion may be deduced. In like manner, the queſtion may be determined by their annual obſequies *for a deceaſed anceſtor*, and by their worſhip of LACSHMÍ or other deities and the like. On this topic, JÍMÚTAVÁHANA adds, this and ſimilar acts can only be done ſeverally by divided coheirs; any one of them muſt therefore be conſidered as preſumptive proof of partition. It ſhould not be objected, that, "ſuch acts" (CCCLXXXVII) ſignifying many ſuch, it is intimated that they are collective *proofs of ſeparation.* The texts are founded on reaſon; and the ſeveral arguments on each being equal, preſumptive proof may be admitted on failure of written and oral evidence.

CHAP.

## CHAP. VII.

ON THE

# RIGHTS OF COHEIRS.

### Sect. I.—*On their Rights after Partition.*

CCCXC.

Náreda:—When there are many defcendants of one man, who feverally perform facred rites, make feveral contracts, and have different employments and different qualities, without concurring in the acts of alienation, *then, if they feverally give or fell their own undivided fhares, the alienation is valid.*

When many perfons, though defcendants of one man, do not concur in acts which denote coparcenary, when they do not join in them, that is, when they are difunited, (but Misra expounds it, when divided coheirs are not re-united,) then they feverally perform facred rites, fuch as oblations to the affembled gods; and make feveral contracts, fuch as loans at intereft and the like. "They may have different employments, &c.;" feverally or different is connected with this part of the fentence, for it has no inflection becaufe it is indeclinable: the fenfe therefore is, they may have different employments, or feverally protect *their refpective families*, and fulfil other duties; and they may have different qualities, as obedience or the like: confequently, they may

may ſeverally perform all theſe things. Such is the opinion of MISRA. Others explain this phraſe as an epithet of the agent in the ſentence: the meaning therefore is, oblations to the aſſembled gods muſt be ſeverally made by active and virtuous coheirs; this obviates the reflection of ignorant and lazy men, "thoſe acts are performed by our brother alone, *that is ſufficient.*"

The legiſlator ſubjoins the fruit of partition (Book II, Chap. IV, v. VI). The *Vivāda Retnácara*, and *Vivāda Chintāmeni*.

According to the opinion delivered in both works, the alienation of property equivalent to his own ſhare, by any one brother during coparcenary, is not proper; but, with the conſent of other coheirs, diviſion, *or ſeparation of his own*, is evidently valid. Conſequently, if any one coheir do ſo, the gift, ſale, or other alienation is good in law, becauſe it is the act of an owner, and becauſe joint-property, not enumerated among things ungiven, *or void donations*, is *only* mentioned among things which ought not to be given away: but it muſt not be queſtioned whether that ſhare, *which is alienated*, falls upon all the brethren, nor whether he ſhall receive an allotment out of the remaining ſhares of other brothers; for, in commenting on a text above cited (CCCLXXIII), it has been ſaid, whatever is given away by any one parcener for his own purpoſes, without the aſſent of the reſt, ſhall be deducted out of his ſhare; and this ſtands uncontradicted by any author. But if any one undivided parcener aliene the whole, then ſurely *the act is null.* VRĬHASPATI declares it (Book II, Chap. IV, V. xviii 5). "Heir," *in this text*, is explained in the *Retnácara* as ſignifying 'ſon.' Divided heirs are here declared to have no power to aliene the immoveable heritage, meaning that the alienation is invalid, becauſe it is made by one who is not owner *of the whole.* "Immoveable" is a mere inſtance; for the reaſoning is equally applicable to gems or the like. But JÍMÚTAVÁHANA and the reſt hold, that coheirs, even though divided, have no power to give or otherwiſe aliene their own ſhares, nor that of another brother; hence a coheir ought not to give away even his own ſhare of immoveable property without the aſſent of the reſt: this is founded on the ſin of diſtreſſing another brother by a gift, ſale, or other alienation made by a miſbehaving perſon; but the donation is not void.

On the former opinion, why is it ſaid, if any coheir aliene

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"the whole;" for the author of the *Retnácara* has almoſt expreſsly declared, that a coparcener's own ſhare ought not to be given away: thus, ſince he permits divided coheirs to diſpoſe of their own ſhares, it is intimated, that the ſame is permitted to undivided coheirs? The anſwer is, there is great ſin in giving away the whole, but leſs in aliening the amount of his own ſhare. Further inferences may be deduced by a ſimple exertion of intellect.

MISRA remarks, that a text formerly cited (Book II, Ch. IV, V. xxxiii) is a principle of law: the aſſent of townſmen, of heirs, and of kindred, *is there required* for the publicity of the gift; the aſſent of neighbours, for the ſake of preventing diſputes concerning the boundaries. But the delivery of gold and water *is alſo directed.* Since the ſale of immoveable property is forbidden *, and the gift of land is alone applauded (Book II, Chap. IV, V. xli): if a ſale muſt be made, it ſhould be done in the form of a donation, delivering gold and water: ſuch is the purport *of the precept.*

'For the publicity of the gift;' elſe the heirs might diſpute it at a ſubſequent time: "heirs" are ſons and the reſt, daughters and others, in ſhort, eventual ſucceſſors. Publicity *is required,* that the townſmen and *the giver's* own kinſmen may be witneſſes. The phraſe, "there is no ſale of immoveable property," is intended to forbid ſuch alienation of it: it is thereby intimated, that a ſpiritual offence is committed by ſelling land, not that the contract is void; for property is equally deveſted by the voluntary act of the owner in ſale as in gift, and it occurs a hundred times in practice. It ſhould not be objected, that, by ſaying "land is conveyed by ſix formalities" (Book II, Chap. IV, V. xxxiii), it is intimated, that real property is not deveſted without thoſe ceremonies, ſince the term "land" would otherwiſe be unmeaning; and thus a ſale of it without delivery of gold and water muſt be invalid, and the current practice contradicts the law. There is no argument to prove, that land is not transferred like gems or other effects by a ſale, or act deveſting property.

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* "No ſale of immoveable property can be *effected without the formalities of donation;* and a mortgage muſt be made with conſent *of coheirs.*" This anonymous text is ſo explained by RAGHUNANDANA, from whom the compiler has copied the quotation. T.

This rule concerning ſix formalities is not a ſufficient argument; for there is no objection to the admiſſion of any other ceremony, as well as the delivery of gold and water, in the caſe of ſale.

Admitting that gift is not *perfect without that formality*, muſt not ſale be alſo invalid without delivery of gold and water? It ſhould not be anſwered, that, although an uneſſential part be incomplete, the principal object may be nevertheleſs accompliſhed. The delivery of gold and water can be no *conſtituent* member of a ſale, which is a temporal act. To the queſtion propoſed ſome lawyers reply, a gift accompanied with gold and the delivery of water are directed to confirm the ſale, leſt at any time the ſeller take *back* the thing on pretence of a fraudulent bargain; for ſale or other alienation of immoveable land, which is conſidered as the ſource of maintenance, is eſpecially forbidden (Book II, Chap. IV, v. XII); and if it be made abominable, preſent evil may enſue; elſe is there not, without the aſſent of perſons reſiding in the town, an act of the will, that this land ſhall belong to this man; and cannot ſuch act of volition, having actually taken place, deveſt the right? In fact, the deveſture of property, though paſt, is not preſumed by the arbitrators, ſince the ſeller may be influenced by avarice, *and deny the tranſaction*. In like manner, the delivery of gold and water is directed to obviate litigation, *when the ſeller*, although the contract be proved by the evidence of kinſmen, *affirms*, "this bargain was made by me with a fraudulent deſign:" unleſs water have been delivered, the validity of the contract may be queſtioned, if the ſeller allege a fraud. Sale is inconteſtably effected by a ſimple act of volition; but formality is ordained (Book II, Chap. IV, v. XXXIII) for the ſake of proof.

## CCCXCI.

Vyása:—At a time of diſtreſs for the ſupport of his houſehold, and particularly for the performance of religious duties, even a ſingle coparcener may give, mortgage, or ſell *his own ſhare of* the immoveable eſtate.

" For the performance of religious duties," common to the coheirs: alienation for theſe purpoſes is not forbidden. Immoveable property, a corrody *out of mines or the like*, and ſlaves *employed in huſbandry*, are ſubject to the ſame rules (Book II, Chap. IV, v. XIV). This text of YÁJNYAWALCYA is founded on the conſideration, that immoveable property is called the ſource of maintenance; conſequently, the loſs of the eſtate, or means of ſubſiſtence, *when it is aliened* with the conſent of thoſe who partake thereof, ſhall not be imputed as a fault. As for the practice of kinſmen, though divided, forbidding a ſale of immoveable property made by a man whoſe general conduct is good, that is founded on a text above cited (Book II, Chap. IV, v. XVIII 5). " A ſingle parcener has no power to give, pledge, or ſell the whole;" meaning his own ſhare and that of another brother. *But* men practiſe *the* purchaſe *of land*, paying to another brother or parcener *his ſhare of* the price.

Even though the reaſon of the law be not *manifeſt*, landed property, though divided, ought not to be ſold without the aſſent of coheirs, under the authority of the text. A certain author has ſo remarked; and ſome lawyers deem this reaſonable. In fact, the ſale or other alienation is not valid without the conſent of the coparceners. But if the ſon of him who acquired the immoveable eſtate ſell it, no other coheir ſhould diſpoſe of it *again;* but the price ſhould be duly diſtributed: the firſt contract being valid by his conſent, the ſecond is void.

To elucidate this ſubject by expounding the various opinions *on it*, partition with a ſon born after a diviſion is again noticed *in this place*. On this ſubject MENU propounds a text (CI).

Sons having made a partition with the father, one born afterwards ſhall take the whole of the paternal allotment on the death of the father. If that parent wiſh to make a ſecond diviſion in his life-time, *the ſon born after partition* ſhall receive his due ſhare out of the father's wealth, not out of the portions allotted to the brothers formerly ſeparated: this is made evident by the word " only, *or alone*." Such is the expoſition ſtated in the *Retnácara*. MISRA alſo delivers the ſame gloſs; but adds, if his father die after re-uniting himſelf with his own brother or ſon, the child born after partition receives his father's ſhare from that perſon. Such is the meaning of the phraſe.

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A ſon born before the diſtribution, that is, one with whom partition has been made, ſhall have no claim on the ſhare of his father; nor a ſon born after it, on that of his brother. Such, according to the *Retnácara*, is the ſenſe of a text cited from VRĬHASPATI (C). It muſt be underſtood, that the ſon born before partition has no claim on the paternal eſtate, if there be one born after it. Having propounded the law concerning the ſhare taken by the father in his lifetime, the legiſlator proceeds to the rule concerning wealth acquired by him after partition.

## CCCXCII.

VRĬHASPATI:—All the wealth of the father acquired *by his own labour, and with his ſeparate fortune*, ſhall deſcend, if he made a partition with his children, to the ſon born after the diſtribution; and the ſons born before it are declared incapable of inheriting that property, *even though they return to the joint-family*.

All the wealth of the father ſhall ſo deſcend after his death; in his lifetime he may diſpoſe of it at his pleaſure, under the rule of VISHNU (XXV): the father's own will likewiſe determines the appropriation of wealth acquired by himſelf, even with the uſe of property left by the paternal grandfather. But MISRA holds, that he has not uncontrouled power over that which is acquired through the uſe of wealth inherited from the paternal grandfather. A remark ſhould be here made: it muſt be remembered, that, according to the *Retnácara* and other works, the rules concerning the patrimony, which has deſcended from anceſtors, muſt, when partition is made with a ſon born after a diviſion, be obſerved in regard to that *portion of the* wealth inherited from the paternal grandfather, which has been received *by the father* on partition with his ſons.

The legiſlator declares, that debts ſhall be divided, as well as property; "the duty of paying debts, and the right of giving, pledging, or ſelling, follow the property inherited," (C 2). "Pledging;" making *or accepting* a mortgage: conſequently



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the son born after a division shall alone possess a pledge which has been given by one who received a loan from the father after the partition with his sons. These being particularly mentioned, does he *also* succeed to all civil claims, such as deposits and the rest? Resolving this question, the legislator adds, "they have no claims on each other, except to purification and oblations of water, if either of them die."

GÓTAMA ordains, "The son born after partition shall take the estate of his father." The text of YÁJNYAWALCYA contradicts this precept.

## CCCXCIII.

YÁJNYAWALCYA:—After a division, a son born of a woman equal in class claims partition *of the original estate*; or a distribution shall be made of the present wealth, exclusive of *subsequent* income and *past* expences.

"A distribution of the present wealth" is another case relative to a coheir deficient in good qualities; consequently a son born after partition, being virtuous, shall receive his share of the whole estate, that is, of both sorts of property, forthcoming and not forthcoming; but one deficient in good qualities shall only receive a share of the present wealth, exclusive of income and expences; that is, without including the subsequent increase, nor what has been consumed by the brethren. Again; the debts contracted by the coheirs must be *first* paid. The shares shall be made good by the divided brethren out of their respective allotments: thus HELÁYUDHA. MISRA and CHANDÉSWARA give a similar exposition. "Equal in class" signifies equal to the father. Since he is exhibited, *by the sense of the phrase*, as the person from whom the son is born by a woman equal in class, parity with him only can be properly understood, not equality with the brother, or other coheir, exhibited by terms subsequent in construction as the person from whom partition is claimed: thus some lawyers expound the phrase. But others explain it, a son born of a woman equal in class claims partition from brothers belonging

belonging to the ſame tribe; conſequently, ſons of the ſacerdotal claſs having already made a partition, ſhall give no ſhare to their brother of the military tribe born after it, but thoſe who belong to this tribe ſhall give a ſhare to him. The beſt of theſe opinions ſhould be ſelected on *the inferences of* common ſenſe.

Brothers being mentioned in the text of VISHNU (CII) as the perſons who ſhall give an allotment *to a ſon born after partition*, may he receive a ſhare from the father or not? Know, that a ſon ſhall receive an allotment from the father alone; and if he be ſeparate, this text is propounded to clear the doubt whether a ſhare ſhall not be given by brothers. Conſequently, VISHNU and YÁJNYAWALCYA have directed, that an allotment ſhall be received from the brothers; MENU, VRĬHASPATI, and GÓTAMA, have ordained, that the ſon born after partition ſhall not receive it from them. On this *ſeeming* contradiction, the author of the *Pracáſa*, CHANDÉSWARA, MISRA, and SÚLAPÁNI remark, 'if the pregnancy was not certainly known at the time of the diſtribution, in that caſe, *ſhould a ſon, who was then in the womb, be born after it*, he ſhall obtain his ſhare from the brothers; but a ſon begotten ſubſequently to the partition ſhall only obtain the eſtate of his father.' But if the pregnancy be manifeſt, no partition can be made: ſo the author of the *Pracáſa* and CHANDÉSWARA. Yet, if the coheirs cannot wait ſo long a time, one ſhare ought to be ſet apart for the child, as directed by VASISHT'HA *in the caſe of pregnant widows* (CXVII). But, ſhould a daughter be produced from that conception, the ſhare *which had been ſet apart* ſhall be ſubſequently diſtributed among thoſe *brothers*. According to this opinion, ſons already ſeparated ſhall have no ſhare of property which had belonged to the paternal grandfather, and was ſeized by a ſtranger, but is ſubſequently recovered; for it appears, that it ſhould be diſtributed like wealth acquired by the father himſelf. This opinion may be thus diſcuſſed: does the title to that property ſubſiſt, even during the period of poſſeſſion by a ſtranger? If it do ſubſiſt, coheirs already diſunited have ſhares of this wealth formerly acquired: if there be no title during that period, there could be no "recovery" of property. If it be ſaid, the right of the owner is deveſted through the ſeizure *of the chattel by a ſtranger*, but a title is again veſted by the recovery *of it*; and that accrues

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to the father alone, because he is the nearest descendant *of the late owner:* the answer is, the property of it is vested in right only of the ancestor's title; sons and the rest ought therefore to participate. The seeming difficulty is thus reconciled; if such title to property be *thus* minutely examined, the father would have no independent power over it, even though recovered before partition: the point must be therefore determined by the further consideration of the father's right, as parent *of the sons*, after this mode; he, not sons already disunited, has a right to the wealth recovered by him after partition; but if it be regained by any one of the brothers, he who retrieves it has a right under the text of YÁJNYAWALCYA (CCCLII 2), and the father has a claim as son of the *former* owner: on that opinion, according to which a fourth part is allotted, he who recovers the property has a right to the quarter of it, and the rest of the coheirs have a claim on the remainder; but the father shall receive half, for he is declared entitled to a moiety of that which is acquired by his son with the use of the patrimony: (less would be improper; more cannot be affirmed, since there is no ground for fixing *any certain greater proportion:)* whatever title the father has to certain property, he has the same right to such wealth even after a division.

But if a father, having made a partition with his sons, die after begetting another male child, and if property of the paternal grandfather, formerly seized by strangers, be subsequently recovered by any one brother, what is the rule *of distribution?* Since the equal right of all the coheirs, after the death of the father, is proved, because they are undivided in respect of that wealth, it should be treated like effects acquired by a coparcener. It should not be asked, admitting the same rule of distribution, in the two parallel cases of wealth recovered, and effects acquired by an undivided coheir, by what analogy can it be rendered applicable alike to the instance of property regained by a divided, and to that of wealth earned by an undivided coheir? The want of proof that others shall be excluded from participation therein is *a conclusive* argument. Nor should it be objected, that the observation of certain lawyers is right, that property in the chattel being devested through the seizure of it by a stranger, a title is afterwards vested, by the recovery of it, in him alone who does retrieve it. Were it so, it might become the property of any other

other perſon who recovers it: now it muſt be affirmed, that the right of a chattel, which is regained, veſts in no other except the proprietor or his iſſue. But with the aſſent *of owners*, he who recovers it ſhall have a ſhare, as is univerſally acknowledged; *or* the chattel ſhall belong excluſively to him, if the reſt had no intention of claiming it. Such is the opinion of ſome lawyers. According to CHANDÉSWARA, he alone who retrieves it gains a title, without *any neceſſity of* inquiring whether the reſt did or did not aſſent. If it be aſſerted, that, in ſuch a caſe, ſhould the chattel be accidentally regained by one alone, though all deſigned the recovery of it, the ſon born after a partition ſhall have no ſhare of it, becauſe the participation of all is only ordained in the caſe of wealth recovered by an undivided parcener: then the opinion of CHANDÉSWARA would be preferable; for, if this ſon do not obtain the wealth of his anceſtors regained by a divided coheir, he ſhall not obtain it, though recovered by an undivided parcener, ſince no diſtinction is ſpecified by YÁJNYAWALCYA, and common ſenſe equally oppoſes it. More on this ſubject may be deduced, by *a ſimple exertion of* intellect, from what is ſtated under the title of Property exempt from Partition.

JÍMÚTAVÁHANA, RAGHUNANDANA, and the reſt, obſerving it to be requiſite in partition that the mother be too aged to bear more ſons, as declared in the texts of Sages (XX and XCVIII), and remarking that ſome legiſlators have ordained an allotment for a ſon born after a diſtribution, hold, that brothers muſt give a ſhare to one who is born after partition, if a diſtribution of wealth inherited from the paternal grandfather have been made by miſtake when their mother was not too aged to bear more ſons; but, ſince partition of the father's own eſtate may be made without requiring that the mother be paſt child-bearing, a ſon born afterwards ſhall take the *reſerved* allotment of his father.

It ſhould not be objected, that CHANDÉSWARA conſiders the ceſſation of the mother's periodical uncleanneſs as indiſcriminately requiſite in every caſe *of partition*; and the rule is thus ſimple: when a diſtribution has been made by a father, a ſhare muſt be given to ſons procreated though not born previouſly thereto; but ſons begotten afterwards ſhall only take the excluſive property of their father: ſuch are the two maxims. But, according to your opinion, the eſtate of the paternal grandfather ſhould be divided

after the mother becomes too aged to bear more sons; this is one rule: the father's own property may be divided at any time by his pleasure; this is a second maxim: sons born after partition shall take their father's *reserved* share *of his own estate*, and receive, even from their brothers, a portion of the property left by the paternal grandfather; these constitute four * maxims. There is consequently one more rule than in the exposition of CHANDÉSWARA. *This should not be objected;* for the precept concerning the succession of a son born after partition to the *several* estate of his father, would be irrelevant, since a child cannot be procreated on a woman after she has ceased to menstruate. It should not be answered, that the texts of VISHNU and YÁJNYAWALCYA would thus also become irrelevant. They are pertinent, since a son born of a pregnancy not manifest *at the time of partition*, claims *a share of* the estate of his paternal grandfather.

According to the interpretation of JÍMUTAVÁHANA and the rest, there is no poverty of meaning in the texts, but the rules are numerous. According to the opinion of CHANDÉSWARA, the precepts (CI, &c.) relate to the case of a partition made by mistake, or to that of a son born of a marriage subsequent thereto. Although the father's passion was extinct *when the division was made*, it is recorded by ancient authors, that desire has, *in many instances*, been revived by potent drugs or the like. This and other inferences may be trusted. Such are the distinctions; and more on this subject may be established by *a simple exertion of* intellect.

## SECT. II.—*On the Share of a Parcener living abroad, and returning after Partition.*

### CCCXCIV.

VRĬHASPATI:—Whether a partition be or be not made,

* So the manuscript; but the number should be three. T.

made, whenever an heir appears, and the property descended to parceners, he shall receive his share:

2. Be it debt, or a written contract, or a house, or arable land, that descended from his grandfather, he shall take his due share of it when he comes, even though he had been very long in a foreign country.

3. If a man leave his joint family, and reside in another province, his share must undoubtedly be given to his male descendants when they appear:

4. Be he the third person, or the fifth, or even the seventh, *that is, in the second, or fourth, or even in the sixth degree,* he shall receive the share that gradually descends to him, on full proof of his birth and family-name.

5. To the descendants, when they appear, of that man whom the neighbours long settled on all sides know by successive tradition to have been the proprietor, his kinsmen shall give possession of the land.

If one son of the common ancestor go to a foreign country, and he and his offspring stay there, but the posterity of the other sons remain at home divided or undivided, then, should the descendants of him who went to a foreign country return, the rest shall give them a share *of the heritage.* In such a case, the form of distribution is this: one share, computed according to the number of sons left by the common ancestor, shall be received by the descendants of him who went to a foreign country, and be distributed amongst them in right of their respective fathers; but if they return after partition, the rest must contribute their due allotments out of their own several shares.

"And the property descended to parceners:" what is liable to partition, not wealth acquired by any one of the coheirs through his own exertions, shall be shared. "Debt;" meaning indiscriminately money lent and sums borrowed by their own ancestors.

"A writ-

"A written contract;" the patent for a corrody or the like. "If a man leave his joint-family," (or the joint-property of the family,) not abandoning it, but making no claim thereon, his ſhare of the debts, and other things above mentioned, muſt be given to his male deſcendants. Such is the interpretation of BHAVADÉVA; but RAGHUNANDANA holds, that a ſhare of any joint-property muſt be given. In effect both opinions are right; for gems and the like acquired by anceſtors can hardly remain after a long time, *but have probably been diſſipated*. "Be he the third perſon," or grandſon of the common anceſtor: or "the fifth," that is, the ſon of the great-grandſon; mentioned becauſe he is the fountain whence proceeds the ſtream of diſqualified perſons: "or even the ſeventh;" mentioned to cloſe the ſenſe, *and exclude a remoter deſcendant;* for the eighth is not entitled to participation.

It ſhould be here remarked, that the right of the fifth or remoter deſcendant ſuppoſes his father, or great-grandfather, or other predeceſſor, to have been living when the common anceſtor died, for otherwiſe he would have no claim (CCCLXX). Does it not follow, that the eighth or remoter deſcendant would alſo have *ſuch* a right in the caſe of his anceſtors having died ſucceſſively, the ſon after the father? No; for, although ſuch a claim be poſſible, his property is deveſted by the adverſe poſſeſſion of another; and the text of the legiſlator *excepts him*. Since the law (Book I, v. CXIII) expreſſes, that "he who ſees his land poſſeſſed by a ſtranger for twenty years, without aſſerting his own right, loſes his property therein," it is thus ordained, that perſons who ſee *adverſe poſſeſſion* alone forfeit *their title;* does it not follow, that men who have gone to a foreign country do not loſe *their property?* Perſons who ſee *adverſe poſſeſſion* forfeit *their title* after the lapſe of a very long period, for relinquiſhment is thus inferred; if he do not abandon it, why does he not claim and recover it? Accordingly, RAGHUNANDANA, commenting on the text of VYÁSA (CCCXCV), obſerves, this precept, relating to uſucaption in the abſence *of the proprietor*, does not contradict the texts relating to adverſe poſſeſſion during twenty years in the preſence *of the owner*.

CCCXCV.

## CCCXCV.

VYÁSA :—Occupancy during twenty years, unmolested by the owner, is *confidered as* poffeffion of land during one generation; twice as much during two:

2. Thrice as much during three; and, in this inftance, proof of a fair title is not required.

This poffeffion during three generations devefts the property of perfons unallied *to the occupant;* but *it does* not *annul the rights* of thofe who are related to him within the degree of a *fapinda*. Hence, on the return of parceners, down to the feventh in defcent from the common forefather, they obtain *fhares* of the property inherited from the paternal anceftor. VRĬHASPATI exprefsly declares it:

## CCCXCVI.

VRĬHASPATI :—A poffeffion by ftrangers for three generations, gives, no doubt, an abfolute title; not a poffeffion by kinfmen within the degree of *fapindas:*

2. The property of a houfe, arable land, a market, or other immoveables, which are poffeffed by a friend, or a near kinfman in the male or female line, who is not the proprietor, fhall not be loft *to the rightful owner:*

3. Nor fhall the hufbands of daughters, nor learned priefts, nor the king, nor his minifters, acquire a title even by a very long and quiet poffeffion.

Relation within the degree of a *fapinda* here fignifies that in which impurity is caufed by the death of a kinfman, and which extends to the feventh perfon, *or fixth degree of afcent or defcent*. By "kinfmen" are meant thofe who fprung from the fame family:

family: this has been already mentioned, and is subsequently repeated. In the second verse, one term signifies *kinsmen in the female line, as* a daughter's or a sister's son and the like; the other signifies kinsmen *in the male line*, including the seventh in descent from the common ancestor; for the word is so employed in a text of BAUDHÁYANA (CCCXCVII). In the third verse, the first term signifies a daughter's husband.

DÉVALA describes a learned priest (Book II, Chap. ii, V. 20); he who studies one *śác'há* of the *Véda*, either singly, or with that body of learning derived from the *Véda*, which is called *calpa*, or the law of sacrifice; or one *śác'há*, with the six bodies of learning, grammar and the rest; and who is assiduous in performing the six prescribed acts, that is, who worships the deities, gives something *to the poor* according to his ability, and reads the *Véda;* (these three acts are relative to another world; three *others* are means of subsistence, namely assisting *others* to sacrifice, teaching *them* to read the *Véda*, and accepting the gratuity thereby obtained as well as alms:) a priest, we say, who studies the *Véda*, and does not wilfully neglect the rites enjoined therein, is called *śrótriya*. Here the study of the *Véda* is the cause; and assiduity in the performance of the six acts consists in the strict observance of its precepts. Accordingly GÓVÍCHANDRA derives the word *śrótriya*, signifying "one who reads the scripture," from *ch'handas, (scripture or holy verse,)* by substituting the synonymous term *śrótra* with the suffix *iya*. He who omits the acceptance of gifts, but is endued with the other qualities *above mentioned*, is nevertheless denominated *śrótriya*. It should not be objected, that assiduity in the performance of the six acts is mentioned to regulate the means of subsistence, not as a condition absolutely required; and consequently he alone is called *śrótriya* who pursues no other means of subsistence, but assisting others to sacrifice, teaching them to read the *Véda*, and accepting gifts *from a pure-handed giver*. Were it so, a man *endued with* such *qualities*, and subsisting by lawful gleaning and gathering, would not be a *śrótriya*. Accordingly the wise recite,

In right of his birth, he is considered as a *Bráhmana;* in right of investiture and other regenerating ceremonies,

monies, he is called twice-born; by learning, he attains prieſthood: by theſe three, a *s'rótriya* or learned prieſt is diſtinguiſhed.

By theſe three, namely by birth, by regenerating ceremonies, and by learning, a *s'rōtriya* is diſtinguiſhed; or prieſthood, the characteriſtick of a *s'rōtriya*, conſiſts in theſe three: conſequently a *Bráhmana*, converſant with the *Véda*, and inveſted with the mark of his claſs, is a *s'rōtriya*, or learned prieſt. Such is the definition; and aſſiduity in the performance of the ſix acts is a quality or epithet intended to forbid inferior means of ſubſiſtence. Even they who have ſtudied any ſingle part of a *sác'há* of the *Véda*, and are not degraded by following any *irregular* profeſſion at their pleaſure, are acknowledged to be *s'rōtriyas*, or learned prieſts. Accordingly MENU, on the ſubject of Succeſſion to the eſtate of one who leaves no male iſſue, ordains, that the property of him who leaves no male offspring ſhall be given to a prieſt who has read the three *Védas*, and is endowed with virtue conſiſting in *mental* purity (CCCCXLII); and DÉVALA directs the delivery of it to learned prieſts (CCCCXLV). Conſequently, on the concurrent authority of both legiſlators, from the etymology of the term, and by virtue of ancient traditional maxims, a *Bráhmana*, who has ſtudied any one of the three *Védas*, is evidently a *s'rōtriya*, or learned prieſt.

Thus ſome lawyers expound the law; but, in fact, whatever be the definition of *s'rōtriya*, he who is venerable on account of his reading the *Véda* or the like, does not acquire a title even by a very long quiet poſſeſſion: (and this ſuppoſes a proprietor different from the king; but the caſe of the ſovereign being owner is diſcuſſed under the title of Duties of Kings.) This we deem reaſonable: and the rule for a ſhare to be received even by the ſeventh perſon *in deſcent from the common anceſtor* relates to one who reſides in a diſtant country; in contemplation of this, it is ſaid, *the property of immoveables poſſeſſed* by a kinſman *who is not the owner, is not loſt*. The precept of DÉVALA (LXXXI) muſt be conſidered as relating to one who reſides in the ſame province. Thus, one ſon of the common anceſtor lived at ſome place other than his father's houſe or the like, and enjoyed wealth acquired by himſelf, and ſo forth; his ſon, having alſo reſided there in a

ſimilar

ſimilar manner, dies; another ſon and his iſſue remained in the houſe of the common anceſtor, and poſſeſſed the eſtate of that forefather: afterwards, when the grandſon of him who reſided at a different place of abode, claims a ſhare of the eſtate inherited from anceſtors, he ſhall have it; but if he die, and his ſon claim a ſhare, this remote deſcendant ſhall not obtain it. Such is the ſenſe of the text of DÉVALA. How can the ſeventh in deſcent from the common forefather be entitled to the ſucceſſion? Becauſe it is the heritage of his near anceſtors; for, although they have not poſſeſſion, which is another mode of acquiſition, they gain a title to that property by birth, under the text of GÓTAMA (Ch. I, Sect. I, Art. I).

Does not the precept (LXXXI) ſignify, that partition of the whole eſtate among undivided parceners, or of a ſmall reſidue among divided coheirs living together or reſiding in the ſame province, extends to the fourth in deſcent from the late owner? (but ſecond partition is only pertinent as it relates to divided coheirs; or "living together" may ſignify re-united:) if a ſon then, ſeparated from his father, die during the life of that parent, his ſon and grandſon alſo dying before his father, and if none but a great-grandſon of the ſon exiſt when the parent ſubſequently dies, he ſhall not obtain a ſhare of wealth remaining undivided: it is the ſame even though coheirs have different abodes after re-union. But as for the opinion that partition extends only to the brother, his ſon, and the ſon of that ſon, even when coheirs, whether undivided or re-united after partition, die ſucceſſively, *the ſon after the father*; and that no partition can exiſt beyond theſe with the great grandſon of the late owner's ſon; may it not be aſked, to whom then would the property belong? The literal ſenſe *of the precept* may be offered in reply; it belongs to the offspring of him who ſurvived when one of two brothers died: but arguments from reaſoning are not ſought in this caſe; for, the ſeveral anceſtors dying ſucceſſively, and the property not having been ſilently neglected during adverſe poſſeſſion, nothing prevents the tranſmiſſion of it even to the hundredth degree of lineal conſanguinity. It ſhould not be affirmed, that this ſenſe is eſtabliſhed on the authority of the text. RAGHUNANDANA and the reſt have not expreſsly ſtated ſuch an interpretation of the law; and the text may be otherwiſe expounded. Again; if two brothers, having gone on a pilgrimage to bathe

bathe at a holy place, die unknown to the reſt, then, ſince it is undetermined who deceaſed firſt, and who laſt, both their great-grandſons, though undivided parceners, would be deprived of their ſhares, becauſe they are more remote from the proprietor than the fourth in deſcent.

Does proprietor ſignify the acquirer of the wealth, or ſimply the owner of it? If *it bear* the firſt *ſenſe*, two uterine brothers could not divide wealth deſcending from anceſtors, which was acquired by the great-grandfather of the grandfather; for they are more remote from the original acquirer than the fourth in deſcent. It ſhould not be argued, that the precept relates to the caſe where no partition has been made from the time when the acquirer lived *to the preſent moment.* The ſenſe of the text does not extend ſo far. It ſhould not be replied, ſuch an inference may be drawn from the uſe of the term "parceners" in the plural number. Still nothing would prevent partition with any one male deſcendant when property, which has been *regularly* divided by *the heirs during* four generations following the acquirer, is held in coparcenary by the fourth in deſcent from the fourth perſon, provided the demiſe was regular *in each generation, the father dying before the ſon.*

If it be ſaid, the ſecond meaning muſt be admitted; and the ſenſe in effect is, that if partition have not been made among any owners during three ſucceſſive generations, a diviſion ſhall not be made in the fourth: the anſwer is, "fourth in deſcent" muſt be referred to ſome origin; but this text would be unintelligible, ſince it is difficult to find the ſource to which that term refers; for, if the meaning be 'fourth in deſcent from the owner of the property,' then, ſince undivided parceners alſo have common ownerſhip, partition may extend to the hundredth deſcendant, provided demiſe were regular, for he is not more remote than the third in deſcent from an owner of it. If it be ſaid, the term is referred to a ſole proprietor of the wealth, then, in the caſe of coparcenary during five ſucceſſive generations, it would become a waif, although demiſe were regular in each degree; or it would be taken by the perſon who ſhould be heir on failure of male iſſue. If it be ſaid, the property devolves on the iſſue of him who died laſt of two brothers, the anſwer is, No; for he was not ſole owner independent of his nephew. It ſhould not be ſaid, the determinate

ſenſe

ſenſe is fourth in deſcent from a ſole owner and common anceſtor. There are no grounds for ſuch an inference. Thus ſome expound the law; but this ſhould be examined.

Others hold, that the right of parceners reſiding in a foreign country extends to the ſeventh perſon, even though demiſe have been irregular in three generations; and this appears from the remark of RAGHUNANDANA, after citing the text of CÁTYÁYANA (LXXIX), 'this relates to parceners living together.' That opinion is not ſatisfactory; for it is eſtabliſhed generally, that a ſon, a ſon's ſon, whoſe own father is dead, and a ſon's grandſon, whoſe father and grandfather are dead, ſucceed to the eſtate of the proprietor; a different rule in regard to perſons reſiding abroad is not eſtabliſhed. It ſhould not be anſwered, the right of perſons reſiding in a foreign country extends to the ſeventh in deſcent, under the text of VRĬHASPATI (CCCXCIV 4). The implied ſenſe of that precept denies the forfeiture of property unpoſſeſſed by coheirs reſiding in a foreign country. But the rights of parceners remaining in their own country are forfeited by diſpoſſeſſion beyond the fourth in deſcent, under the text of DÉVALA (LXXXII). It ſhould not be objected, that the law declares the right of inheritance to extend to the fourth perſon. There is no argument on which that ſenſe can be alſo rejected. It ſhould not be urged, that, as the property of ſtrangers is deveſted by want of poſſeſſion, ſo are the rights of near kinſmen alſo forfeited by diſpoſſeſſion during ſixty years; but, ſince a text declares the right of inheritance of parceners reſiding in a foreign country to extend to the ſeventh perſon, it is of courſe true, that their title is not loſt even though they have not had poſſeſſion during ſixty years. VRĬHASPATI ſpecially ordains, that the rights of kinſmen ſhall not be forfeited by want of occupancy (CCCXCVI 1). Does it not follow, from the text of VRĬHASPATI, that the property of kinſmen is not forfeited, even though unpoſſeſſed during a hundred generations? This law is ſo explained by CHANDÉSWARA and the reſt: after expounding a text of DÉVALA, CHANDÉSWARA, citing a precept (LXXXII) with the word "ſo" premiſed, proves it to be a law of DÉVALA: it would therefore be a vain repetition of the preceding text (LXXXI); and it would be troubleſome to eſtabliſh different cauſes of property in wealth inherited from anceſtors, on a diſtinction

between

between the offspring of one who resided in his own, and of one who lived in a foreign country. It should not be objected, 'since thou dost establish dispossession to be a cause of forfeiture, it is equally troublesome to prove different causes thereof on a distinction between persons residing in their own and in a foreign country.' Forfeiture is not an immediate consequence of dispossession *during a certain period*. Does it then become a mediate cause of forfeiture? Silent neglect annuls a title, and dispossession proves that *neglect*. Accordingly the property in an *aśuatt'ha* tree or the like, acquired by the party himself, is not forfeited, even though it be unoccupied during a long period.

The law may be thus briefly recapitulated: a son, a grandson, and a great-grandson, succeed to the estate of a father, of a paternal grandfather, and of a paternal great-grandfather, on their decease; if coheirs, residing in their own country, take not their shares during three generations, the right is lost to their descendants; but it is lost to the posterity of coheirs residing in a foreign country, if the seventh in descent claim not *the share*.

If a kinsman possess the several property of another, related to him within the degree of a *sapinda*, and three generations of owners do not claim it, what shall be the consequence? Some lawyers reply, the title is not lost: for VRĪHASPATI declares generally, that wealth, joint or several, possessed by kinsmen, is not lost *to the rightful owner*: however, the claim on undivided property is forfeited in the case of silent neglect during three generations; as appears from the word "succession, *or partition*," in a text above cited (LXXXII).

A son, a son's son, and the son of that grandson, not the son of this great-grandson, succeed to the estate of a proprietor; if then the son, his son, and the son's son, die during the life of the owner, and leave a son of that great-grandson, afterwards, when the proprietor dies, his wife succeeds to the estate, although a son of a great-grandson exist: but if the owner decease while the great-grandson is living, and this heir subsequently die, the estate devolves on his son, in right of the property vested in him. Such in effect is the meaning. Consequently, if the son of a grandson go to a foreign country, after the son, and son's son, have deceased during the life of the proprietor, and if no intelligence be received of his health, then, the owner afterwards dying, the son

of the great-grandſon, preſuming his father's death when twelve years have elapſed *without receiving news* of the abſent perſon, has performed his obſequies: *now* the ſon of the proprietor's daughter, who reſided in another province, learning the death of his own maternal grandfather, and the preſumed deceaſe of the great-grandſon of that anceſtor, comes and claims the eſtate of his maternal grandfather; and the ſon of the great-grandſon alſo claims it as the patrimony of his father: what is the rule of deciſion on this litigated queſtion? The title either of the daughter's ſon, or of the great-grandſon, on the death of the proprietor, is a matter of doubt; becauſe the right of her ſon is not aſcertained without proof of the great-grandſon's prior demiſe; and the title of this heir is not aſcertained without evidence of his being then alive *when the proprietor deceaſed*. It ſhould not be anſwered, the right of the daughter's ſon muſt be adjudged, becauſe the certainty of the great-grandſon's title could alone debar him; but in this caſe no ſuch certainty exiſts. It is ſimpler to admit the great-grandſon's title as of courſe debarring the daughter's ſon, *though not certainly known*; for there is no argument to prove that the poſitive knowledge of it is required. It ſhould not be ſaid, the want of any ground of choice, on other conſtructions, is alone a ſufficient argument in this caſe. Were it ſo, the ſucceſſion of the daughter's ſon taking place on the *ſuppoſed* certainty of the great-grandſon's demiſe, this male deſcendant would have no right *to the inheritance* ſhould he afterwards happen to return; there is no argument on which the right of the daughter's ſon could be ſubſequently annulled, and property veſted in the great-grandſon; and this would become a caſe of difficulty. Has not the daughter's ſon a ſole right, ſince the great-grandſon has no valid title, under a text cited by RAGHUNANDANA (CCCLXXXIV), becauſe he has not poſſeſſed the eſtate? If the great-grandſon die on the day immediately following the demiſe of the proprietor, his ſon would in this caſe alſo have no title to the ſucceſſion.

On this ſubject it is ſaid, ſince the text expreſſes "property which a man has accepted unmoleſted by another," acceptance alone juſtifies a title; hence, even without poſſeſſion, if he do accept it, the eſtate becomes the property of the great-grandſon, and afterwards devolves on his ſon: and this is reaſonable; *for*,

as neglect annuls a fair title, and bars an incomplete one, so does acceptance justify an imperfect title. Accordingly, the great-grandson gains a right to an *aśwatt'ha* tree or the like acquired by his paternal great-grandfather. Thus, if the great-grandson, being afflicted by disease, and insensible at the time of his great-grandfather's demise, do not accept the estate, and die immediately afterwards, the exclusion of his son is acknowledged, for the great-grandson is then dead. In like manner, exclusion is also admitted, if he be then afflicted with present insanity in a high degree. But, according to the opinion of those who assert the title of the great-grandson in right of birth alone, under a text above cited (Chap. I, Sect. I. Art I.), his son may in this case succeed to the estate. This should not be affirmed; for, if the great-grandson die during the life of the proprietor, to exclude the son of that descendant, it must still be affirmed that acceptance without possession taken by an owner is requisite *.

Thus some lawyers expound the law: but that is wrong; for, a doubt still remains unsolved, whether the heir, who resided abroad, being then alive, and any-how learning the demise of his paternal great-grandfather, did or did not accept the succession. As for what is argued, that a fair title is not gained without acceptance, that is also wrong; for, acceptance is only mentioned as it disproves silent neglect. Accordingly the heir, discovering, after ten or fifteen years, a chattel appertaining to his father, but unknown at the time of that parent's demise, may justly take it. Others hold, that, in consequence of doubt, the son of the great-grandson, and the son of the daughter, shall of course take equal shares.

MENU declares the right of succession to extend to the great-grandson (CCCLXX). To three, to the father, the paternal grandfather, and great-grandfather, water must be given in the form of an oblation; for three, for the father and the rest, is the funeral cake ordained in the double set of oblations; the fourth in descent is the giver of funeral cakes and water to them, namely, to the father and the rest: (the text must be so supplied.) A

 precept

* Because the collateral heir, not having a title by birth, must become owner by acceptance, to the exclusion of a remote lineal heir, who claims in right of birth. T.

precept ordaining the gift of funeral cakes being inserted under the title of Succession to Heritage, the benefit conferred *on ancestors* by descendants, down to the great-grandson, is exhibited as the ground on which they inherit the estate. The succession of a son and grandson born in lawful wedlock is declared by a text *formerly cited* (XI).

Again; if there be the son of a son born in lawful wedlock, and a son adopted through donation, *then*, no son of the body or other superior claimant being left, the son given has a title as ordained by law, and the son's son has the same claim with his father; and if male issue born in lawful wedlock, and the son of a son given, survive, that grandson shall take the same allotment with such an adopted son, under the text of CÁTYÁYANA (LXXIX 2). That a son given, being deficient in virtue, shall not take the estate of the paternal grandfather, is an exception to be deduced from a text formerly cited (CXC 2). At present, the son of a wife legally appointed, and other inferior sons, succeed to the estate of a paternal grandfather, or other ancestor, who leaves no surviving male issue: to show this, the legislator propounds the text (CCCLXX). It is therefore proper that sons, improperly so called, should succeed to the estate of a paternal grandfather leaving no surviving male progeny; and it is declared by an express law (XI), that the son of a son born in lawful wedlock shall share the estate of a paternal grandfather, who outlived his male offspring; for the text is so expounded by CULLÚCABHATTA. Consequently, as "son," *signifying male issue*, includes the great-grandson, so "father" (CXC 2) includes the paternal great-grandfather. Such is his meaning.

If the son given possess little, and his son possess much virtue, what is the rule of adjustment? In fact, the good qualities of him who actually takes a share, should alone be considered; as in the case of a blind son, *whose offspring, being virtuous, shall take the heritage*. At present, a third part is allotted to a son given, without inquiring his good or bad qualities; the same should also be allotted to his male issue, *if he be dead*.

## CCCXCVII.

BAUDHÁYANA:—The paternal great-grandfather and

and grandfather, the father, the man himſelf, his uterine brother by a woman of equal claſs *with the father*, his ſon, his ſon's ſon, and the ſon of that grandſon; all theſe, partaking of undivided oblations, Sages pronounce *ſapindas*, or near kinſmen allied by funeral cakes; thoſe who ſhare divided oblations, they call *ſaculyas*, or diſtant kinſmen allied by family: male iſſue by males being left, the eſtate of the father ſurely muſt go to them; on failure of *ſapindas*, the ſpiritual teacher, the pupil, or the prieſt *uſually* employed at ſacrifices, ſhall take the eſtate; on failure of them, the king.

"Partaking of undivided oblations," *(avibhacta dáyáda,)* here bears various ſenſes. That which is offered *(díyatê)* is an oblation *(dáya)*; meaning the funeral cake. They who eat that, which is an undivided offering, are perſons partaking of common oblations. By the word "undivided" is ſignified the eating of the funeral cake together. He who becomes an eater of a funeral cake with another, is *(dáyáda)* an eater of the oblation preſented to him: this is a ſettled rule. Thus the great-grandſon taſtes a funeral cake with his father, paternal grandfather, and great-grandfather, at his own *ſapindana* (or firſt annual obſequies) performed by his own ſon: the great-grandſon is therefore a *ſapinda*; but the ſon and grandſon certainly are ſo: in like manner three anceſtors, the father and the reſt, are alſo *ſapindas*. But Jímútaváhana likewiſe ſays, a ſon, a ſon's ſon, and ſon's grandſon, are *ſapindas*, becauſe the funeral cake is offered by them. Conſequently, they who well *(á)* preſent *(dadati)* a common oblation *(dáya)* or funeral cake, are perſons offering undivided oblations *(avibhacta dáyáda)*. By the word "undivided," the funeral cake of the double ſet is ſuggeſted. Again; uterine brothers, preſenting undivided oblations, will offer a funeral cake to undivided, *that is, to the ſame*, manes. Conſequently, a man likewiſe offers a funeral cake to thoſe *manes* to whom his uterine brothers alſo preſent ſuch oblations.

 "Undivided"

"Undivided" alludes to the perfons to whom the funeral cake is offered. He who gives one to them, who likewife receive fuch offerings from another perfon, is *(dáyáda)* his fellow in the prefenting of oblations. Such in effect is the meaning. Again; they who eat the undivided oblation of a man, that is, the funeral cake in the double fet offered by him, are his *fapindas*. Thus the father, the paternal grandfather, and great-grandfather, are fo denominated.

Would not a brother by a different mother, a paternal uncle, his fon, grandfon, and others, be likewife *fapindas? The anfwer is*, what difficulty follows? Uterine brothers are mentioned in the text to exhibit a portion of the fubject. Would not the fon of a daughter likewife be a *fapinda?* There is no difficulty, his relation by the funeral cake not being fuch as gives *him* a title to take the heritage.

Or the term *avibhacta dáyáda* may be explained in a fingle fenfe: for they tafte an undivided oblation; and three anceftors, the father and the reft, eat an undivided funeral cake with three defcendants, the fon and the reft, at the *fapindana* or firft annual obfequies: and "undivided," as an epithet of oblation, fignifies that it is to be eaten by manes, who *alfo* tafte an oblation to be partly eaten by *the propofed perfon* himfelf. Other defcendants of the paternal great-grandfather are thus comprehended in the fame term; and the mention of "uterine brothers" fuggefts this interpretation. That expreffion of BAUDHÁYANA is indefinite; it is employed to announce what is of courfe true in the chief inftance. If the paternal great-grandfather was degraded, the defcendants of his father are thereby excluded: and in like manner, the fon of a daughter and others may be excepted. There is no difficulty if a daughter, whether married or unmarried, be not confidered as a *fapinda;* for fhe may inherit her father's eftate on the fole authority of a *fpecial* law.

"By a mother of equal clafs:" this is merely intended to declare pre-eminence. "Thofe who fhare divided oblations:" this is the converfe of the former term. He who only eats a funeral cake at a double fet of oblations not offered by a certain perfon, he who offers not a funeral cake to thofe manes who receive one from that perfon, he who does not eat a funeral cake with another, or he who offers not a funeral cake to another, is

is his diſtant kinſman ſharing divided *or ſeparate* oblations: *the one* eats a divided offering, that is, an oblation different from that which is preſented by the perſon in queſtion; *another* is divided or *ſeparate*, that is, he eats not a funeral cake with that perſon; *a third* gives a divided funeral cake, that is, he offers one, in the double ſet, to be received by other manes; *a fourth* preſents a funeral cake to other manes than thoſe who receive ſuch offerings from the propoſed perſon. Here diviſion, like partition of property, muſt be underſtood as ſignifying ſecondarily the ſeparation or disjunction of perſons to whom funeral cakes are offered.

"Male iſſue by males being left:" among the *ſapindas* mentioned, iſſue of the body being left, the eſtate, that is, the heritage, ſhall go to them. The plural number being employed, many deſcendants of the perſon propoſed are underſtood in this phraſe. The co-ordinate right of a ſon, a ſon's ſon, and a ſon's grandſon, is thereby ſuggeſted; but the grandſon, or other deſcendant, whoſe own father is living, is debarred by the concurrent text of Cátyáyana. That is not right; for, were it ſo, the ſon of a daughter would alſo have a co-ordinate title with a ſon *(ſince he alſo is iſſue of the body)*. The title of a ſon, grandſon, and great-grandſon in the male line is therefore ſuggeſted by this text; and their co-ordinate rights are deduced from the text of Cátyáyana. Or the funeral cake to be offered by the ſon of a daughter, and other deſcendants *in the female line*, to a maternal grandfather or remoter anceſtor, is ſecondary, as it accompanies the oblations which the father and other anceſtors of the male line receive: the ſon of a daughter is not therefore equal to a ſon *of the body*; hence he has no co-ordinate title to take the heritage.

On failure of male iſſue by males, kinſmen within the degree of a *ſapinda* have a right to the inheritance; and on failure of *ſapindas*, a diſtant kinſman or *ſaculya*: this is evident from the text, and ſhall be ſubſequently conſidered.

The nearneſs or proximity of kinſmen is a requiſite condition under the text of Menu (CCCCXXXIV); conſequently, he who is nearer of kin to the proprietor, in compariſon with another, ſhall alone take the inheritance, to the excluſion of that remoter kinſman; or he who is nearer of kin to the late proprietor than any *other* living claimant, ſhall take the eſtate left by him: does it not follow, that the grandſon, whoſe own father is dead, has not

 a pre-

a preſent title, ſince he is more diſtant than the ſurviving ſon? The anſwer is, this text relates only to the claims of *ſapindas:* a ſon's ſon has a right of ſucceſſion merely as he is the *perpetuated body of his anceſtor:* and he *really* did ſpring from the perſon *of his grandfather;* for a text expreſſes "the bodies of anceſtors are born again of her" (CXCVII). Although the legiſlator, having declared three, the ſon and the reſt, to be *ſapindas* (CCCLXX), ſeems to ordain the ſucceſſion of him among them who is neareſt of kin (CCCCXXXIV); and *although* this text do not allude to the *ſapindas* deſcribed by BAUDHÁYANA (for it is propounded by a different Sage); ſtill the following rule of deciſion muſt be eſtabliſhed, to reconcile it with the texts of BAUDHÁYANA and CÁTYÁYANA: he among *ſapindas,* (meaning thoſe who are noticed by the ſame legiſlator, namely the ſon, grandſon, and great-grandſon in the male line,) who is nearer of kin than any other living claimant, ſhall take the eſtate; but the grandſon, whoſe father is dead, is not more diſtant than his ſurviving uncle, for he belongs to another line of deſcent. Thus ſome expound the law. But CULLÚCABHATTA holds that this text would be ſuperfluous, if it ſolely related to ſuch *ſapindas* as are *lineal* deſcendants born in lawful wedlock and the like; it muſt be therefore intended to authoriſe the ſucceſſion of a wife and others not mentioned *by the legiſlator:* to the neareſt *ſapinda,* male or female, the eſtate of the deceaſed ſhall belong. Here that term intends ſuch as have been mentioned by BAUDHÁYANA; and a wife muſt be conſidered as a *ſapinda,* becauſe ſhe aſſiſts *her huſband* in the performance of religious duties.

CHAP.

# CHAP. VIII.

ON

# COLLATERAL SUCCESSION.

## Sect. I.—*On Succession to the Estate of a Housekeeper leaving no Male Issue.*

1. A Son, a ſon's ſon, and the ſon of a grandſon, have a fair title to the eſtate of a *deceaſed* proprietor, *although the grandſon and great-grandſon be* more diſtant than the ſurviving father or paternal grandfather of the late proprietor: but who ſhares the heritage on failure of them? In reply to this quſtion, the texts of Yájnyawalcya and others are cited.

### CCCXCVIII.

Yájnyawalcya:—A wife, daughters, both parents, brothers, their ſons, kinſmen ſprung from the ſame original ſtock, diſtant kindred, a pupil and a fellow ſtudent in theology;

2. On failure of the firſt of theſe, the next in order ſhares the eſtate of him who has gone to heaven leaving no male iſſue: this law extends to all claſſes.

"Leaving no male iſſue;" leaving no ſon, grandſon, or great-grandſon in the male line capable of inheriting. Jímútavá-

HÁNA, RAGHUNANDANA, and the reſt, deliver nearly the ſame expoſition. In the firſt place, the wife is heir to the eſtate of ſuch a deceaſed proprietor: that is the meaning; and VRĬHASPATI alſo declares it.

## CCCXCIX.

VRĬHASPATI:—In ſcripture, in law, in *ſacred* ordinances, in popular uſage, a wife is declared by the wiſe to be half the body *of her huſband*, equally ſharing the fruit of pure and impure acts:

2. Of him whoſe wife is not deceaſed, half the body ſurvives; how ſhould another take the property while half the body *of the owner* lives?

3. Although diſtant kinſmen, although his father and mother, although uterine brothers, be living, the wife of him who dies leaving no male iſſue ſhall ſucceed to his ſhare:

4. *Since ſhe was* previouſly eſpouſed in due form, ſhe muſt ſupport the conſecrated fire; and after the death of her huſband, the widow, faithful to her lord, ſhall take his wealth: this is a primeval law.

5. Taking his effects moveable and immoveable, the precious and baſe metals, the grain, liquids, and clothes, let her cauſe the ſeveral *ś'ráddhas* to be offered in each month, in the ſixth, and at the cloſe of the year:

6. With food conſecrated to the gods and the manes, let her honour paternal uncles, ſpiritual parents, daughter's ſons, the offspring of her huſband's ſiſters, and his maternal uncles, learned men, unprotected perſons, gueſts, and females of the family.

In the *Véda*, in codes of law, in *ſacred* ordinances, the wife is

is pronounced one perſon with her huſband; both are conſidered as one. So likewiſe in popular uſage, that is, in the practice of men, a thing being delivered to the wife, it is a valid gift to the huſband; and a thing being received from her, it is a valid receipt from him: in theſe and many other inſtances the practice occurs. "Equally ſharing the fruit of pure and impure acts;" *equally intereſted* in maintaining the conſecrated hearth and the like, and in acts juſtified by the nuptial fire. Such is the explanation given by authors. "Although his father and mother and near kinſmen be living:" this is *merely* illuſtrative, comprehending daughters and the reſt. "Leaving no male iſſue;" leaving no great-grandſon or other nearer deſcendant in the male line: ſuch is the ſenſe.

If the wife be half the body of her huſband, may ſhe not excluſively take his wealth, although ſons or other male deſcendants be *living?* No; for it appears from *the words of* SANC'HA and LIC'HITA, "the bodies of his anceſtors are born again of her, let him figuratively addreſs his own ſoul in the perſon of his child" (CXCVII), that a ſon or other male deſcendant is conſubſtantial with the father or other anceſtor.

"Let her perform the *śráddhas* in each month, and in the ſixth, and ſo forth:" the text ſhould be ſo ſupplied. The double ſet of oblations muſt not be offered, becauſe women are forbidden to perform this rite: conſequently, the *śráddha*, and honour ſhown to paternal uncles and the like, being mentioned under the title of Inheritance, ſhe is only competent to the performance of thoſe rites which are ſpecified. But CHANDÉSWARA remarks, 'ſome hold, that a woman may offer the double ſet of oblations; to forbid that, the legiſlator enumerates the *śráddhas*, "in each month, in the ſixth, and ſo forth." By the word "month" are ſuggeſted the *śráddhas* offered in twelve *ſucceſſive* months; by the term "ſixth" are ſuggeſted two *śráddhas* celebrated in the ſixth month, *one* before the expiration of it, *the other performed as uſual;* the term "and ſo forth" includes the firſt annual obſequies, and the anniverſary *śráddha* to be performed yearly: hence ſhe muſt celebrate no other obſequies; elſe thoſe *other śráddhas* muſt be authorized by other texts; and this precept would be unmeaning.'

Since a double ſet of oblations is offered in the firſt annual obſequies, RAGHUNANDANA and the reſt hold, that the performance



of

of this rite by a woman must be deduced from a special text, expressing, that the first annual obsequies by *sapindas*, and the anniversary *s'rádd'has*, may also be performed by a woman *.

"Learned men, unprotected persons, guests, and *females of the family*;" the first term signifies versed in science, for it is exhibited in the Dictionary of AMERA among the Synonyma of learned. "Females of the family;" the widows of her husband's sons, and the rest. Daughters of her husband's sisters, if destitute of protectors, are included under the term "unprotected persons:" the support of them is only necessary if they be so circumstanced. Consequently, all this should if possible be done at the charge of her husband's estate; otherwise *(if the funds be inadequate)*, it must be done in words only: it is not necessary that she should deprive herself of the means of subsistence, to support the uncles and other relations of her husband; nor should she, for that purpose, do what is unauthorized by the law. But her husband's father and mother, being old, must be maintained, even though the utmost distress ensue: for her husband was authorized by a text of MENU (Chap. VI, Sect. II, Art. I.) to use irregular means for the support of his father and mother, and the rest.

On this some remark, the practice of this country goes farther; but, however intelligent he may be, a man cannot contemplate *every possible case*. Some *Bráhmanas* spring from a dignified race; those who give daughters in marriage to them, are exalted with their own lineage; if they do not dispose of their daughters to such persons, reverence is withdrawn: these *Bráhmanas* accept damsels in marriage from many families, but neither maintain those wives nor their offspring. Such being the notorious practice, if her husband have died after giving a daughter in marriage

* Sixteen *s'ráddhas* must be performed for a *Bráhmana* recently deceased. The first on the day immediately following the period of mourning; twelve monthly oblations; one additional *s'ráddha* before the expiration of the sixth month; another before the expiration of the year; and lastly, the *sapindana*, or first annual obsequies, performed on the anniversary of his death. Thenceforward, obsequies should be annually celebrated for an ancestor on the date of his death, besides monthly *s'ráddhas* and other ceremonies directed by MENU in the third chapter of his Institutes. See MENU, Ch. III, v. 247. In *Mit'hilá*, and some other provinces, the obsequies for a *Bráhmana* recently deceased are abridged, and by a fiction completed on the second day after mourning. T.

riage to a man ſprung from a noble family, and that daughter, though virtuous, be not ſupported by her own huſband, (for, according to general practice, he is only bound *to ſupport his wife*, if his father-in-law, with the generoſity of his anceſtors, allot food and apparel to that wife, and, means permitting, *give* land or the like for her future maintenance;) that daughter muſt, if poſſible, be ſupported by her mother: elſe, how ſhall ſhe ſubſiſt like an unprotected perſon, although ſhe have a protector? This very practice is alſo proper in reſpect of the daughter of her father-in-law; for the dignity of her huſband was raiſed by ſuch act of her father-in-law *(beſtowing his daughter on a man of noble birth)*. The grand-daughter in the female line muſt, if poſſible, be likewiſe maintained; for ſhe alſo is ſuch *as is a daughter;* and perſons of noble birth muſt give their female children in marriage to men born of noble families. This practice, founded on the rank eſtabliſhed by the mighty prince BALLÁLA SÉNA, has been adopted by great perſonages. Though not found in codes of law, it is noticed *in this place* to explain the *ſubſiſting* practice. It ſhould be examined by the auſpicious *learned*. *Hence*, either theſe women muſt be comprehended under the term "females of the family;" or elſe the uſage of contracting numerous marriages muſt be diſcontinued.

Conſequently, ſhe whoſe huſband is deceaſed ſhould ſupport, in proportion to her ability, the ſame perſons, and do the ſame acts, in the ſame manner in which her huſband, when living, ſupported thoſe perſons, and did thoſe acts. But it is not abſolutely neceſſary that ſhe ſhould fulfil the ſame voluntary offices which her huſband did, ſuch as ſupporting *Bráhmanas* reſident in the *ſame* town and the like. This is deduced from the term "unprotected perſons." The inference is alſo the ſame when any other ſucceeds *to the eſtate of the deceaſed*.

Others deduce from the expreſſion "honour with food conſecrated to the gods and the manes," that pious offerings are alone poſitively directed; hence occaſional preſents of food and apparel and the like are ſuggeſted, not a *ſettled* maintenance: and this is reaſonable; *for*, Sages have not, *by anticipation*, compoſed books in conformity with the preſent practice.

JÍMÚTAVÁHANA, too, after ſaying 'the widow ſhould give the uncles of her huſband *ſufficient funds*, in proportion to the eſtate,

eſtate, for his obſequies and for other ceremonies,' adds, this is ſuggeſted by the term "food conſecrated to the manes;" (for ſo the word is explained in the Dictionary of AMERA.) By "paternal uncles" are meant the *ſapindas* of her huſband; by "daughter's ſons," the offspring of his daughter; by "ſiſter's ſons," the children of his ſiſters; by "maternal uncles," the family of his mother. To theſe, and to others ſtanding in a ſimilar relation, ſhe ſhould give it; not, while theſe exiſt, to the relatives of *her* father; for the text (CCCXCIX 6) would be unmeaning: but, with their aſſent, ſhe may give as much as ſhe pleaſes to the kinſmen of her own father and mother. NÁREDA declares it (Book IV, v. XIII).

With food conſecrated to the gods and the manes, a widow muſt ſhow due honour to the ſons of her huſband's daughters, to his paternal uncles, and the reſt. Thus ſhe ought not to beſtow preſents on the family of her own father, without honouring with gifts the family of her huſband. For the ſake of this explanatory repetition the text (CCCXCIX 6) is propounded.

But others expound the precept of NÁREDA (Book IV. v. XIII) as ſignifying, that the *neareſt kinſman in the* family of her huſband has authority in the diſpoſal of property, that is, in donation. She may give a preſent to that perſon on whom the kinſman of her huſband bids her confer one; ſhe may beſtow that which he bids her give away. The perſon who receives the preſent is conſidered as receiving it from her huſband; for ſhe is dependent on her lord *even after his deceaſe*. "With food conſecrated, &c." (CCCXCIX 6); with victuals ſacred to the manes, that is, with a *s'ráddha* after death; and with maintenance, that is, with food and the like during life: conformably to the literal ſenſe of the verb *prĭ*, cheriſh and fill. But ſome lawyers expound the ſame phraſe, 'honour the paternal uncles of her huſband and the reſt, at *(cavya)* the rites ſacred to progenitors, and at *(púrta)* the rites ſacred to the gods.'

UDAYACARA explains "faithful to her lord" (CCCXCIX 4), firm in the rigid duties of a faithful widow. The definition of ſuch a woman is delivered by HÁRÍTA (Book IV, v. CVII): ſuffering pain when her lord endures it, that is, affected in mind by ſimilar anguiſh; cheerful when he is ſo, affected by joy proceeding from his gladneſs; in his abſence, pining under the anguiſh

guiſh of ſeparation, and ſqualid through neglect of ornaments and dreſs; who dies when he expires, that is, follows him in death; the woman who does ſo, ſuch a virtuous woman, *we ſay*, diverting her mind from impure deſires, ſuch as luſt for other men and the like, muſt be conſidered as *truly* faithful to her lord. Conſequently, ſince ſhe cannot herſelf offer the monthly *s'ráddhas* and the reſt, if ſhe follow her huſband in death, the cauſal form of expreſſion in the phraſe "cauſe to be offered," is pertinent.

She who is owner of the thing to be offered muſt command the *s'ráddha* to be given: the Sage acknowledges her to be the proprietor of the whole eſtate ſo long as ſhe lives. Other texts muſt be alſo expounded in a ſimilar manner. Such is the opinion of this commentator. But that is not admitted by CHANDÉSWARA and the reſt; for, blameleſs widows, endowed with every quality but *this of* the ſtricteſt fidelity to their lords, *(which implies their burning with the corpſe,)* would have no title *of ſucceſſion*. That the text of CÁTYÁYANA (CCCCLXXVII 2) would be nearly irrelevant, is an objection to that interpretation. The remark in the *Retnácara* is therefore juſt, that rigid conduct *here* ſignifies the ſtricteſt rule preſcribed to widows *who chooſe to ſurvive their huſbands*.

If the woman be already inveſted with the eſtate, her enjoyment of it is of courſe legal: and it is therefore ſuperfluous to ſay "let her enjoy it;" for there can be no *divine* command enjoining that which is already deduced from a ſecular maxim. Neither can a poſitive precept, that ſhe muſt indiſpenſably enjoy it, be conveyed *by this text;* for it would eſtabliſh a moral conſequence, and ſhe would be guilty of a ſpiritual offence if ſhe ſhould happen not to enjoy it. Conſequently the enumeration of rites is here an explanatory precept; the conſtruction therefore is, ſhe ſhall do nothing but enjoy the eſtate of her lord, *that is, the wealth* of no other. It muſt not be queſtioned, whether the care *of property*, and the like, be not thus prohibited. A rule conveys an exception of that which is ſimilar, *but not identical;* and an explanatory repetition alſo is a ſpecial rule: but a preceptive one, which is different from an explanatory repetition, is nearly technical, or founded on acceptation. Hence the inference, that a widow ſhall not make a gift or other alienation of her huſband's wealth devolving on her *by the failure of male iſſue*. Accordingly JÍMÚ-

TAVÁHANA

TAVÁHANA remarks, a widow ſhall only enjoy the eſtate; ſhe ought not to give it away, mortgage, or ſell it. It appears from the term "ought not," that, if ſhe do ſo, the act is valid: but the giver ſhall be amerced for beſtowing that which ought not to be aliened, as is directed by the text of NÁREDA (Book II, Ch. IV, v. LXVII).

RAGHUNANDANA acknowledges, that, for the purpoſe of raiſing her huſband to a region of bliſs, a wife may give away property left by him, and devolving on her *by the failure of male iſſue.* Hence it is underſtood, that ſhe ought not to do ſo for any other purpoſe. VÁCHESPATI BHATTÁCHÁRYA has delivered the ſame expoſition. BHAVADÉVA alſo concurs nearly in the ſame opinion. It is ſaid in the *Vivâda Chintâmeni,* 'as women are declared by poſitive texts to be incapable of giving away or otherwiſe aliening immoveable property beſtowed on them by their huſbands, ſo are they incapable of aliening the landed eſtate of their lords.' Wealth given by a huſband *here* ſignifies that which has been conferred by him on his wife to be her abſolute property, as explained by NÁREDA (XVI). A woman has independent power to give away or otherwiſe aliene moveable effects given to her by her huſband, but not immoveable property. So the *Vivâda Chintâmeni.* It appears from this declared incapacity and dependence, that the donation is void, being made by a perſon incompetent, and not independent. Accordingly a woman is pronounced ſubject to the controul of *the neareſt kinſman on* her huſband's ſide, in reſpect of gift, which is an alienation; *as appears* from the term "authority" in the text of NÁREDA (Book IV, v. XIII). Modern lawyers do not concede to this opinion; for the validity of a gift made by the owner ſhould not be impugned while no ſpecial text pronounces it void. As for the declared ſubjection of women to the controul *of the neareſt kinſman,* when deprived of huſband and ſon, it does not thence appear that the gift made by her is void; for the implied object *of the text* is only to ſhow ſin in not ſubjecting herſelf to *the controul of kinſmen on* the huſband's ſide; and it coincides with a text of the *Mahâbhârata,* ſignifying, that women ought not to waſte the property of their lords (CCCCII). Accordingly wealth is given away by a woman for the ſake of raiſing her huſband to a region of bliſs. As a text formerly cited (Book II, Chap. IV, v. XIV) ſhows, that immoveable

immoveable property ought not to be given away without the assent of sons, not that the donation is impracticable: so should the same be also established in the present instance; for the same reasoning is equally apposite.

It is argued, that the text of the *Mahábhárata*, and that of CÁTYÁYANA (CCCCII and CCCCLXXVII 2), declaring *present* enjoyment to be the only fruit *derived by a woman from her wealth*, forbid the transfer of *such* property to another; whence it fully appears, that her disposal of it at pleasure, otherwise than by the *simple* use of it, or by donation for the benefit of her lord, as authorised by *another* text (CCCCI), is invalid. It should not be asked, why is it not said the wife shares only food and apparel, but the brothers or other heirs have the ownership? Were it so, they might immediately give or sell it. Nor should it be affirmed that the gift is not void; because wealth devolving on the wife, *by the failure of male issue*, is not enumerated among things of which the donation is null, in treating of Subtraction of Gift. Not being enumerated among those which ought not to be given, it would fall into the class of things which may be aliened. Is it suggested, by texts belonging to that title, that this *property* may not be given, or that the gift is void? On this point there is no ground of preference.

But that argument is wrong; for "may enjoy," a term employed in the form of an explanatory precept, fully shows that a woman should do no other act but simply enjoy the property: whence it follows, that she ought not to give it away, nor otherwise dispose of it. In the case of an explanatory precept, it does not appear that a different act is void. Were it so, it would follow, from the maxim "eat *certain* five-toed animals," that the act of eating five-toed animals, other than the porcupine and the rest of five *such creatures which may be lawfully eaten*, is null. Nor is that admissible; for it does *sometimes* happen, that human flesh, or that of monkeys and the like, is inadvertently swallowed, and both consequences of appeasing hunger and nourishing the eater do actually follow. No reasoning being offered against the validity of the gift, when the paternal estate inherited on failure of nearer heirs is given away by a daughter, in preference to whom a wife would have succeeded, it does not seem congruous that a gift should be null which is made by a wife who

succeeds in preference to a daughter, and who is declared by sacred ordinances to be half the body of her lord, and who expends property of her husband during his life. It should not be answered, 'you yourselves must admit the inferiority of the wife compared with the daughter; for you do not prohibit the donation of the paternal estate by a daughter to whom it has descended, but you forbid the alienation of her husband's estate by a wife on whom this has devolved.' Although a daughter be permitted to make a donation, the inferiority of a wife compared with her is not thereby suggested; for a widow should live in *the practice of* austerities with extinguished passions, refraining from *pleasurable* food, bed, and other gratifications, which she may desire, because she ought to devote herself, being as it were the property of her husband, to his sole service. In like manner, she must not dispose of other property of her lord, unless for his benefit; she ought to observe the rigid duty of carefully preserving it. This also is a duty strictly incumbent on her, not to appropriate the wealth of her lord to civil purposes, any more than consecrated property. A gift or other alienation made by the wife is therefore valid, *though blameable*: however, the king, informed by the heirs, should duly punish her, not the accepter of that donation; for no law authorizes his punishment. Such is the rule of decision established by modern opinions. But the text of NÁREDA (Book II, Ch. iv, V. lxvii) is authority for chastising a widow *who alienes such property*.

If nothing ought to be given by a wife, may she, or may she not, give money to the king by way of fine when she has committed a sin deserving pecuniary punishment?' She must necessarily pay the fine by way of atonement: the prohibition relates to *gifts and payments*, other than *such as are positively* ordained. In like manner, if unable to undergo abstinence or other penance, she must give a milch cow or the like; and gifts or other alienations must be made for the sake of *attaining* the region of bliss.

## CCCC.

VYÁSA:—After the death of her husband, rigidly practising the austerities of a student in theology, the

the widow ſhould, after bathing, daily preſent water to *the manes of* her huſband from the hollow of both hands *joined:*

2. Day after day let her perform with humility the worſhip of deities; and, conſtantly faſting *at appointed times*, adore VISHNU:
3. Let her give preſents to the chief of prieſts, that *her* purity may be augmented; and obſerve the forms of auſterity preſcribed by law.
4. A woman, ever aſſiduous in her duty, *thus* redeems both her huſband abiding in another world, and herſelf, O beauteous female!

She ſhould preſent water from the hollow of both hands, in the form of an oblation. The worſhip of VISHNU muſt be performed on the twelfth lunar day; ſhe muſt faſt on the eleventh. By the word "conſtantly," it is ſuggeſted that this ſhould never be omitted *on the appointed days.*

## CCCCI.

*Smriti*, cited in the *Dáyabhága tatwa* and *Madana párijáta*:—Whatever is moſt deſirable in this world, whatever moſt delighted her huſband, that muſt be given to ſome virtuous man by a widow anxious to gratify her lord.

No other gift or alienation ought to be made: ſo in the

## CCCCII.

*Mahábhárata*;—*Simple* enjoyment is declared to be the fruit which women gather from the heritage of their lords; on no account ſhould they waſte the eſtate of their huſbands.

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On this JÍMÚTAVÁHANA remarks, enjoyment might alſo conſiſt in the wear of delicate apparel and the like; but ſuch uſe only is approved which is requiſite for the welfare of her body, becauſe ſhe confers a benefit on her lord by the preſervation of her perſon. In like manner, gift or other alienation for his obſequies is approved. Accordingly the legiſlator ſays, women ſhould not waſte the eſtate of their huſbands; and the diſſipation of it conſiſts in expences not neceſſary for the owner of the eſtate. Hence, if ſhe cannot otherwiſe ſubſiſt, hypothecation is permitted; if ſhe cannot even thus maintain herſelf, ſale is alſo permitted; for reaſon ſhows no diſtinction.

"Afterwards, the legal heirs ſhall take it" (CCCCLXXVII 2); the meaning is, 'after her they ſhall obtain it.' Heirs are thoſe perſons whom the law permits to take the effects in right of affinity or relation. In anſwer to the queſtion, whoſe effects? the wife being readily offered as the neareſt term *in the ſentence*, does it not follow that a ſiſter's ſon and the reſt, who are legal heirs of the wife's excluſive property, ſhall take the eſtate? No; for, were it ſo, their ſucceſſion being eſtabliſhed of courſe, this precept would be ſuperfluous. It ſhould not be anſwered, that the text (DXIII) relates to wealth technically called the peculiar property of women: hence an eſtate inherited on failure of nearer heirs is not included *in that law;* and this precept is therefore pertinent, as it declares the ſucceſſion to inherited effects. That text (DXIII) is not naturally reſtricted to the property of women technically ſo called; *this maxim is therefore propounded to limit that law.* Conſequently, he who would have immediately ſucceeded, were ſhe then proved not to be living, ſhall alone ſucceed when ſhe dies after a title has been *intermediately* veſted in her. This rule, which has the ſanction of RAGHUNANDANA, JÍMÚTAVÁHANA, and the reſt, ſhould be reſpected.

But the authors of the *Retnácara* and *Viváda Chintámeni* contend, that a wife cannot give away the immoveable property of her huſband, which has devolved on her by the failure of male iſſue: but ſhe may give away moveable effects; they expound the text of CÁTYÁYANA (CCCCLXXVII 2) as relating to the perſonal eſtate of her huſband, which has devolved on her.

That is liable to objection: for, the text is expounded by JÍMÚTAVÁHANA as relating to the peculiar property of a

woman

woman given her by her husband: and their exposition is improper, because the text contains the words "after the death of her husband;" else, since his estate cannot devolve on his wife unless he be dead, it would be superfluous to say, "after the death of her husband."

VÁCHESPATI BHATTÁCHÁRYA explains this law as relating to ornamental apparel or the like given by her husband, and worn by the wife unforbidden by him: that also is the exclusive property of the woman, under the text of MENU and VISHNU (CCCCLXXVIII). 'Ornamental apparel, though not given by her lord, but worn with his assent, is in so much only the exclusive property of a wife:' so the *Médhátit'hi*. Herein the *Vivāda Chintāmeni* also concurs; and hence she may dispose at pleasure of such ornamental apparel after the death of her lord. But what must she do while he is living? This question is answered by the last hemistich of the text of CÁTYÁYANA, "as long as he lives let her preserve it" (CCCCLXXII 2): consequently, her ornamental apparel must not be given away while he is living; since it was not spontaneously bestowed by her husband, it must be established, that she has not independent power over it, as over other sorts of property possessed exclusively by women. This commentator so explains the text: he reads the letter *ē* joined to *csh* in the last measure of the verse (*cshēpayét tat culē' nyathā*), and thus expounds that reading: if she dispose of it, she must bestow it on his family and no other. Hence also it follows, that moveables received on the death of her husband must not be aliened at pleasure.

Among authors attributing various meanings to the text of a legislator, is it not improper to reject the opinion of an ancient lest that of a modern one be contradicted? It should not be argued, that it is proper to set aside the opinion maintained by authors of other provinces, (for these commentators belong to the *Mait'hila* school,) in favour of one maintained by an author of our own country. They are sometimes cited as authority by our own countrymen. The established rule of another province is deemed fit by virtuous men of the present day.

The text is thus expounded in the *Vivāda Retnācara* and other works: *in respect of a wife*, the estate of her husband is of two sorts; wealth devolving on her by the death of her husband, and

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that which is held by her as property during his life, in right of her alliance with him, under the text which declares property common to the married pair. Wealth devolving on her *by his death* is again of two ſorts, moveable and immoveable: the perſonal eſtate of her huſband, which has deſcended to her, ſhe may diſpoſe of at pleaſure under the text above quoted (CCCCLXXVII 1); but wealth received during his life at her marriage, on account of her alliance with her huſband, ſhe muſt preſerve *ſo long as he lives*. Suppoſing his death, where muſt it then be placed by the wife? In reply to that queſtion, the legiſlator propounds the law concerning the immoveable eſtate of a deceaſed huſband: ſhe muſt go *(cſhapayĕt)* to his family, meaning to that of her lord; otherwiſe, that is, on failure of his family, ſhe may enjoy it living with her ſpiritual parents, namely, her own father and the reſt. It ſhould not be argued, that this text properly relates to the gifts of affectionate kindred, as ſuppoſed by HELÁYUDHA and the *Párijáta*, becauſe it is delivered under that head. Were it ſo, the queſtion, what muſt be done with the eſtate of her lord devolving on her? would not be ſatisfied; the other expoſition is therefore proper, in conſequence of that queſtion: and authors acknowledge, that an *interpretation, which reſolves a doubtful and* unſatisfied queſtion, ſhould be preferred to *one which accords with the context, and with* the ſubject treated *in the place where the text may have been propounded, but which leaves the queſtion unanſwered.*

The inference is denied; for, expounding with VÁCHESPATI BHATTÁCHÁRYA the firſt verſe (CCCCLXXVII 2) as relating to the gift of affectionate kindred, and the ſecond verſe (CCCCLXXVII 2) as relating to the eſtate of her lord which has devolved on her, digreſſion is thus avoided, and the queſtion is ſatisfied.

But other lawyers thus explain the texts of CÁTYÁYANA (CCCCLXXV 3, and CCCCLXXVII 1 and 2): having received "ſuch a gift from affectionate kindred," that is, wealth preſented through natural affection by her own father and kinſmen, or by her father-in-law and the reſt, ſhe has abſolute excluſive dominion over it; hence ſhe may at pleaſure give, ſell, or otherwiſe aliene it. But, in reſpect of wealth given by her huſband, there is a diſtinction: during his life ſhe muſt preſerve

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it; after his death ſhe may act as ſhe pleaſes; but if ſhe be incapable of guarding it herſelf, ſhe muſt commit it to his family. By this declared exception, ſhe has not abſolute dominion during the life of her huſband over wealth given by him, though ſhe have ſuch power over other gifts from affectionate kindred. Or, *otherwiſe expounding the texts*, a gift from affectionate kindred is threefold: one preſented *to a woman* by her own father and the reſt; ornamental apparel or the like worn with the aſſent of her huſband, though not given by him; and, *laſtly*, immoveables beſtowed on her by her huſband. Concerning the firſt ſort, namely, property moveable or immoveable given her by her own parent, by her father-in-law and ſo forth, and concerning moveables beſtowed on her by her huſband, the legiſlator propounds the firſt verſe (CCCCLXXV 3). Concerning the ſecond ſort, namely, ornamental apparel and the like worn by her with the mere conſent of her huſband, he propounds the ſecond verſe CCCCLXXVII 1). After the death of her lord, ſhe is permitted to diſpoſe of this at pleaſure; what muſt be done while he lives? To this queſtion the legiſlator replies, "let her preſerve it." If ſhe cannot herſelf guard it, what muſt ſhe do? To this queſtion he *alſo* replies, ſhe muſt commit it to his family, that is, to the offspring of her huſband, and ſo forth, not to her huſband himſelf; for, ſince it was not given by him, it cannot be ſuppoſed that he may take it: the meaning therefore is this; a woman ſhall not aliene ſuch effects, even though ſhe wiſh to give them away, becauſe ſhe cannot herſelf preſerve them. The alienation of immoveables given her by her huſband is forbidden by NÁREDA (CCCCLXXVI); what then muſt be done by a woman in regard to ſuch immoveables? On this *queſtion* the legiſlator propounds the third verſe (CCCCLXXVII): a ſuppoſed occaſion of enjoyment ariſes from the term childleſs; but a widow who has a ſon cannot properly uſe the eſtate, becauſe ſhe is ſupported by him. Since NÁREDA ordains the reſumption of the excluſive property of diſloyal women (CCCCV), this legiſlator adds, "preſerving inviolate the bed of her lord;" and ſince that is moſt arduous, he further ſays, "ſtrictly obedient to her ſpiritual parents," that is, to the father of her huſband and ſo forth, or, on failure of ſuch *guardians*, to her own father and the reſt. *The widow* may enjoy that eſtate with frugality; ſhe muſt

not be prodigally expenſive: ſuch is the meaning. She may conſequently uſe it to ſupport life, but not to wear delicate apparel or the like. "Until ſhe die;" from this explanation of enjoyment it follows, that donation is prohibited. On whom ſhall that eſtate devolve after the death of the widow? The legiſlator replies, "the legal heirs ſhall take it;" that is, the heirs of the peculiar property of the woman: this is a repetition intended to ſatisfy a doubtful queſtion. Or the legal prohibition of giving away immoveables received from a huſband, although they become the property of the woman, prevents their deſcent to any other than the heir of her huſband; after the death of the widow, his heirs ſhall therefore take the eſtate: and this interpretation has not been noticed by CHANDÉSWARA and the reſt, nor by JÍMUTAVÁHANA and his followers. But it is inſerted in this place, becauſe it is irregular to conſider as a repetition what may be explained as an original precept; and a queſtion does ariſe whether immoveables received from a huſband, which CÁTYÁYANA, when treating of the excluſive property of a woman received from affectionate kindred, forbids her to aliene, ſhall or ſhall not deſcend after her death to other heirs than thoſe of her huſband.

If immoveables, though voluntarily given by her huſband, cannot be aliened by the wife, ſhe cannot of courſe give away immoveable property devolving on her, and of which ſhe becomes the true owner: admitting, therefore, that the landed eſtate of her huſband, which has devolved on the wife by failure of iſſue male, ought not to be given away, on whom ſhall ſuch her eſtate (not aliened, but long preſerved by her,) devolve when ſhe dies, after *carefully* preſerving the inherited immoveables of her lord? The anſwer is, ſince the law ſhows the claim of a woman's heirs to be reſtricted to that which is technically called her excluſive property, they are legally incapable of this ſucceſſion: the claim of her huſband's heir, ſuggeſted by the tenor of the ſubject, is therefore eſtabliſhed; and he whoſe title would have been proved, if ſhe had not been living, has the right *of ſucceſſion* after her death. This method is followed by JÍMÚTAVÁHANA in the caſe of a daughter. It ſhould be here remarked, that although ſome acknowledge the huſband's right to that which his wife has gained by *painting, and other* arts or the like, ſtill, ſince ſhe is principally

principally confidered in the inftance of fuch wealth, it fhould be taken by her heirs; it is the fame on the opinion of thofe who do not acknowledge any claim of the hufband on fuch property. How can the heirs of a woman, who are declared to be fucceffors to that only which is technically called her exclufive property, have a right to take this inheritance? As the heirs of her lord fucceed to what chiefly belongs to him, fo her own heirs claim what appertains chiefly to the wife: in the filence of the law this is a reafonable maxim. Thus do thefe authors explain the rule, grounding their interpretation of it on the opinions of HELÁYUDHA and the *Párijáta*.

This expofition follows all authorities in forbidding the alienation of immoveables devolving on a woman by the death of her hufband, and in affirming the fucceffion of his heir to fuch immoveables: it follows the *Viváda Retnácara* and *Vivāda Chintámeni*, in permitting a woman to give or fell at pleafure the moveable effects of her hufband devolving on her *by failure of iffue male;* it follows the obvious fenfe of the text in admitting his heirs to fucceed, after the death of the wife, to immoveables given by her hufband; and on this point the interpretation of VÁCHESPATI BHATTÁCHÁRYA furpaffes that delivered in the *Vivāda Retnácara* and *Vivāda Chintámeni*. According to the *Retnácara* and the reft, the moveable effects of her hufband, which had devolved on the wife, go after her death to her own heirs; for the text above cited (CCCCLXXVII 2) relates only to immoveable property. This muft be acknowledged *by thofe authors*.

Texts of legiflators, which contradict the univerfal fucceffion of the wife to the eftate of him who leaves no male iffue, are *now* cited, that they may be expounded.

## CCCCIII.

SANC'HA, LIC'HITA, and PAIT'HÍNÁSI:—The effects of him who dies leaving no male iffue go to his brother; on failure of him, let both the parents take it, or the eldeft wife; *after thefe*, a kinfman bear-

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ing the ſame family name, a pupil, and, *laſtly*, a fellow ſtudent in theology.

Firſt, the property goes to a brother; next, to both parents. Here an alternative is mentioned in reſpect of the wife; 'or ſhe ſhall inherit, *that is*, on failure of both parents.' So

## CCCCIV.

DÉVALA:—Next uterine brothers ſhall divide among themſelves the heritage of one who leaves no male iſſue; or daughters, who have an equal claim to it; or the father, if he ſurvive his ſon:

2. *On failure of them*, brothers equal in claſs, a mother, and a wife, ſucceed in order.

Here brothers equal in claſs, but born of different mothers, are meant. Another order of ſucceſſion is thus propounded; for the daughter is mentioned after the whole brother; and a half brother on failure of the father.

## CCCCV.

NÁREDA:—Among brethren, if any one die naturally or civilly, and leave no iſſue, the reſt may divide his property among themſelves, excepting the wealth of his wives:

2. And ſhall ſupport them until they die, provided they preſerve unſullied the bed of their huſband; but from other widows the heirs may reſume their excluſive property *.

The legiſlator thus demonſtrates the ſucceſſion of the wife, in ſome inſtances, when the king does not take the eſtate (CCCCXLVIII 2).

* The Verſe inſerted at ccccxlviii 2 was alſo cited in this place immediately after V. ccccv 2. T.

(CCCCXLVIII 2). So VASISHT'HA alſo intimates, that the eſtate of him who leaves no male iſſue goes to his brother, although his wife ſurvive, if it be impoſſible that ſhe ſhould bear children (CXVII). Here the expreſſion "until they bear ſons" (CXVII), relates to widows left pregnant: thus MISRA. But others hold, that this rule, which ſuppoſes a ſhare to be ſet apart, even if it be poſſible that ſhe ſhould bear a ſon procreated by a kinſman, belongs to other ages: a reaſon is thereby aſſigned why the widow ſhall not now inherit if brothers be living.

The ſucceſſion of the brother, though a wife ſurvive, and of the wife, though a brother ſurvive, has been propounded by various legiſlators: hence a contradiction *ariſes*. It ſhould not be argued, that they who ordain the ſucceſſion of the brother in preference to the wife, direct a maintenance for the widow; hence texts which ſuggeſt her right muſt intend by implication the allotment of a maintenance, for thus the precepts mutually coincide. It is expreſsly declared, that a wife has a right to the whole property left by her huſband (CCCCVIII).

## CCCCVI.

MENU:—If brethren, once divided and living again together as parceners, make a ſecond partition, the ſhares muſt in that caſe be equal; and the firſt-born ſhall have no right of deduction.

2. Should the eldeſt or youngeſt of ſeveral brothers be deprived of his ſhare *by a civil death on his entrance into the fourth order*, or ſhould any one of them die, his *veſted intereſt in a* ſhare ſhall not wholly be loſt;

3. But, *if he leave neither ſon, nor wife, nor daughter, nor father, nor mother*, his uterine brothers and ſiſters, and ſuch brothers as were re-united after ſeparation, ſhall aſſemble and divide his ſhare equally.

BÁLARÚPA obſerves, 'under theſe texts of MENU, if brethren, after

after a first partition, live again together as parceners on a *mutual* agreement in this form, "that property which is thine is also mine," and *subsequently* make a second partition, no additional portion shall be given to the first-born. Should any one of them be deprived of his share by his entrance into the fourth order or the like, or by natural death, it shall not be lost; but his single share shall be computed and received in due proportions by his uterine brothers, even though not re-united, and by his half-brothers who were re-united with him; and a fourth part must be given for their nuptials to *such of* his uterine sisters who had not already received a quarter of a share for that purpose: and this allotment of a fourth part to a sister must be understood in the case where the former distribution was made according to the number of mothers, each of whom had born a son and a daughter. Such being the sense, brethren re-united after separation having thus recovered the right of inheritance (CCCCXXVI), claim the estate of him who leaves no male issue, in preference to the widow; but she would succeed to the estate of one who left no male issue, and who was not re-united *with his brethren*.'

That is not acknowledged by JÍMÚTAVÁHANA; for the text of VRĬHASPATI, expressed nearly in the same terms with that of MENU, shows that a brother, even though re-united, has no claim if the wife survive; and JÍMÚTAVÁHANA states many other objections, which are here omitted to avoid prolixity; for his purpose is attained by a single *valid* objection.

## CCCCVII.

VRĬHASPATI:—If brothers who have made a partition become, through mutual affection, re-united, and *again* make a division of their joint-property, the first-born has no right to a larger portion.

2. Should any one of them die, or any-how seclude himself from the world, his share shall not be lost, but devolve on his uterine brother;

3. But she who is his sister is next entitled to take the

the ſhare: this law concerns him who leaves no iſſue, nor wife, nor father, *nor mother.*

Cullúcabhaṭṭa alſo remarks on this text of Menu concerning a re-united brother, ‘ this muſt be conſidered as the rule, if he leave neither ſon, nor wife, nor father, nor mother.’ But Váchespati Misra affirms, that all texts which ſuggeſt the ſucceſſion of brothers in preference to the wife relate to the eſtate of an undivided brother, and the texts cited which ſuggeſt her ſucceſſion in preference to them relate to the eſtate of a huſband who has made a partition with his brothers; for, if he die before the diſtribution, it cannot be affirmed, “ this was the property of her huſband,” ſince all the brethren are joint owners of that wealth: the widow therefore can have no title. It ſhould not be argued, that ſhe may claim partition with the brothers of her huſband, and take his ſhare. A diſtribution among brethren being permitted after the death of both their parents, an expreſs law ſhows, that a brother, his ſon, grandſon, and the reſt ſhall receive ſhares (LXXIX); but no law declares that the wife *of a deceaſed brother* ſhall *in that caſe* take an allotment. Nor ſhould it be argued, that texts which propound the right of the widow eſtabliſh her participation, ſince they cannot be otherwiſe pertinent. Theſe texts may alſo relate to the inheritance of divided property, and may therefore be otherwiſe applied. Accordingly Vasisht’ha has declared, that the widow of a childleſs brother may hold a ſhare until ſhe bear a ſon (CXVII). In fact, that allotment belongs to the *poſthumous* ſon alone; but, if none be born, that ſhare ſhall be received by, and diſtributed among, the brothers. Such is the meaning; for the words “ until they bear ſons,” would be otherwiſe unmeaning.

This again does not appear ſatisfactory; for the participation of the widow is deduced from the word “ ſhare” in the text of *Vríddha* Menu. That term is not uſed in ſpeaking of ſucceſſion to an eſtate which has been already divided, for it carries a reference to ſome entire property; and when this *ſhare* is now inherited, there is no total *of which it is part.*

CCCCVIII.

## CCCCVIII.

*Vriddha* MENU:—A widow who has no male iſſue, who keeps the bed of her lord inviolate, and who ſtrictly performs the duties of widowhood, ſhall alone offer the cake at his obſequies, and ſucceed to his whole ſhare.

It ſhould not be argued, that this reading *(critſnam anśam labhét)* reſts on the authority of JÍMÚTAVÁHANA and others: but MISRA and the reſt read, ſucceed to his whole eſtate *(critſnam art'ham labhét)*; and hence, according to this *laſt* reading, it does not appear that a widow ſhall participate *with coheirs*. It is evident from the text of VRÍHASPATI (CCCCXCIX 3), that ſhe ſhall participate. JÍMÚTAVÁHANA explains the term which occurs in that text, *(ſanábhi,)* as ſignifying uterine *brothers*. It is derived in the appoſition called *bahubríhi*, and intends thoſe who were borne in the ſame womb *(nábhi)*. In this text the word "with" muſt be underſtood; and the third caſe, governed by that particle, ſignifies 'at the ſame time,' as in the example, "the lioneſs ſleeps fearleſs with her ſingle cub; the female aſs bears her burden with her ten colts*:" the ſenſe of the text is, "although uterine brothers be living, the wife of him who died leaving no male iſſue ſhall ſucceed to his ſhare;" that is, ſhall inherit the allotment of her deceaſed lord. Accordingly, the following mode of reconciling *the apparent contradiction* muſt be alſo rejected: 'the text above cited (CCCXCVIII) ſhould be expounded as ſignifying that brothers by different mothers ſhall divide the eſtate among themſelves; and conſequently uterine brothers have a claim before the widow, but half-brothers after her:' *it muſt be rejected*, becauſe the text of VRÍHASPATI ſhows the right of the widow *to inherit*, although an uterine brother exiſt: and this is reaſonable; for, ſince the deveſture of her huſband's property, together with his leaving no male iſſue, is a general cauſe which veſts property in the widow when divided wealth

* The quotation was partial. I cite the verſe at large from the ethical treatiſe of CHA'NACYA MISRA. T.

wealth is conſidered; there is no obſtacle to prevent its veſting in her, even though the wealth be undivided, or be held by re-united parceners. The limitation of divided property is there improper, becauſe it would be troubleſome *to prove*, and no law ordains it. But theſe texts are nevertheleſs pertinent. This is alſo held by Jímútaváhana and the reſt.

Chandéswara, finding in the text of *Vrĭdd'ha* Menu (CCCCVIII) the words "who ſtrictly performs the duties of widowhood," and deeming it irregular to treat that as a ſuperfluous term which may be explained as an *indiſpenſable* condition, affirms, that a wife who does ſo is alone preferred to a daughter, to a brother, and the reſt; and ſhe who does not ſtrictly perform the duties of widowhood, *though* not guilty of adultery, ſhall be merely maintained by her huſband's brother and kinſmen, under the text of Háríta: but an adultreſs ſhall be baniſhed from the houſe, conformably with the precept of Náreda (CCCCV 2).

## CCCCIX.

Háríta:—A woman, widowed and young, is untractable; but ſeparate property muſt always be given to women, that they may paſs their deſtined life.

Succeſſion to heritage, in right of good qualities only, does actually occur in the caſe of adopted ſons. Since a woman has not *yet* performed the duties of widowhood and the like, how can ſhe have a title to the inheritance immediately after *the* death *of her huſband?* She has an immediate title, becauſe ſhe is diſpoſed to perform thoſe duties; but afterwards, if her propenſities happen to change, ſhe forfeits the right which ſhe had fully poſſeſſed. "Young" is mentioned in the text of Háríta, as indicating the poſſibility of adultery. By youth, *that* age is not ſtrictly meant; for any woman, though young, who is known to be well diſpoſed, has the right of inheritance by univerſal conſent. By the term "untractable" is ſuggeſted the neglect of the duties of widowhood. They conſiſt in refraining from the leaf of betel, from unction, from eating off veſſels of zinc (Book IV, v. CXXXIV),

v. CXXXIV), and from ſleeping on a bed (CXXXV), and ſo forth, and in ſtrict abſtinence on the eleventh lunar day, and in other acts of mortification.

## CCCCX.

PAI'T'HÍNASI:—The effects of him who leaves no male iſſue go to his brother; on failure of brothers, his father and mother ſhall take *the heritage*, or his wife not diſtinguiſhed by good qualities, his diſtant kinſman bearing the ſame family name, his pupil, or a fellow-ſtudent in theology.

The wife not eldeſt, that is, *not ſenior by her virtue, or, in other words*, not diſtinguiſhed by good qualities, is heireſs on failure of the father and mother; ſuch is the ſenſe of the text: and that concerns wealth acquired by the man himſelf without uſing the property of his ſire. The claim of a brother is prior to that of a father or mother, becauſe he is firſt entitled to perform obſequies *for the deceaſed.* Brothers of the whole and half blood ſucceed in order according to the benefits conferred by them; but, although they are conferred in unequal degrees among whole brothers by an elder and by a younger one, ſtill, ſince there is no difference in the degree of benefit ariſing from the funeral cake offered by them in the double ſet of oblations, they do not ſucceed in order, but inherit jointly. The reaſon is this: an heir being ſought for the eſtate of one who has left no male iſſue, his brothers and his parents being propoſed, both claims ſeem equal; (for theſe confer benefits by ſharing the funeral cake offered in the double ſet of oblations, and by giving birth to him; and his brothers do ſo by preſenting the ſingle and double ſets of oblations, which he was bound to offer, and by performing his obſequies:) admitting, therefore, the greater weight of rites relative to another world, his brothers ſhall inherit, like ſons and the reſt, before his father; but his half-brothers ſucceed after thoſe of the whole blood, becauſe they are not qualified to offer the *pārvana* for his mother. Among uterine brothers, although an elder one be not competent to perform the obſequies of the deceaſed,

ceaſed, if a younger brother exiſt, they have a joint title, becauſe age and qualities are not conſidered in *the* claims to *this* inheritance: elſe the ſame rule would exiſt in the ſucceſſion of ſons; for the eldeſt performs the obſequies of his father. This ſhould alſo be underſtood in the caſe of half-brothers. The order in which a father and mother claim ſucceſſion ſhall be explained hereafter; and that order muſt be obſerved in this inſtance. But if the property were acquired with ſupplies received from the father and the reſt, the claim of parents precedes even that of a brother, as ordained by YÁJNYAWALCYA; becauſe the benefit of aiding the acquiſition of wealth is greater *than any other;* and becauſe they are related *in the firſt degree* without an interval.

On failure of theſe, "the wife not diſtinguiſhed by good qualities *ſhall inherit*" (CCCX). By this epithet, and under the text of YÁJNYAWALCYA (CCCXCVIII), ſhe who performs all the preſcribed duties of widowhood claims the ſucceſſion before a brother.

The expreſſion "leaving no male iſſue," ſignifies 'leaving none male or female,' the laſt term being underſtood. It conſequently ſignifies 'leaving no ſon, nor virtuous wife, nor daughter.' In like manner, ſince the daughter's ſon precedes a brother in offering the funeral cake in the double ſet of oblations; ſince he performs the obſequies of the deceaſed, in preference to the collateral kindred; and ſince the text of VRĬHASPATI propounds his title, the brother can only claim the ſucceſſion after the daughter's ſon.

## CCCCXI.

VRĬHASPATI:—As ſhe (the daughter) becomes owner of her father's eſtate, although kinſmen be living; ſo likewiſe her ſon is acknowledged to be the heir of the eſtate left by his mother and maternal grandfather.

Conſequently, the virtuous wife has the firſt claim to the wealth acquired by her huſband, who has left no male iſſue; next, the daughter; after her, the ſon of a daughter; in default of him, the

the uterine brother; on failure of ſuch, one by a different mother: after theſe, the ſon of a whole brother; next, the ſon of a half-brother; on failure of them, the mother; if ſhe be dead, the father; if both be deceaſed, the wife poſſeſſing few good qualities: but a mere maintenance ſhall be given by the heir to a widow wholly deſtitute of virtue: on failure of a wife poſſeſſing few good qualities, the ſucceſſion devolves on diſtant kindred and the reſt. The order in which daughters ſucceed may be ſeen under the proper head; and the authority on which a brother's ſon takes the heritage will alſo be found in its place.

This order of ſucceſſion being eſtabliſhed in the caſe of wealth acquired by a man himſelf, the very ſame ſequence ſhould be followed in the caſe of wealth acquired with ſupplies received from the father and the reſt. *However*, the reverſed order of father and brother, founded on the diſtinction of *various* ſorts of property, ſhould not in that caſe be adopted; but the order of ſucceſſion propounded by YÁJNYAWALCYA and the reſt muſt in ſuch an inſtance be followed, if the wealth were acquired with ſupplies received from the father and the reſt: ſince a wife poſſeſſing few good qualities is not then conſidered as conferring any benefits, the order ſhould not in that caſe be broken *to interpoſe her between the father and brother*. In whatever text it is ordained that a mere competency for ſubſiſtence ſhall be given to the wife, it muſt be underſtood of one devoid of good qualities. A wife poſſeſſing little virtue muſt likewiſe be ſupported by brothers and the reſt; for the proprietor was bound to maintain her. As for the text of SANC'HA, it muſt be conſidered as appoſite, when a father or brother takes the eſtate of his ſon or brother. In the precept of DÉVALA (CCCCIV), order ſignifies the ſequence which is of general notoriety; and that is found in the texts of VISHNU and the reſt. CHANDÉSWARA thus expounds the law.

## CCCCXII.

SANC'HA:—To the childleſs wives of brothers and of ſons, ſtrictly obſerving the conduct preſcribed, their

their ſpiritual parent muſt allot mere food and old garments which are not tattered.

But ſome add, by way of ſupplement to the opinion of CHANDÉSWARA, that food and apparel muſt be given, under the text of SANC'HA, to the childleſs widow of a ſon or brother by her father-in-law, her brother-in-law, and the reſt, who take the eſtate of her deceaſed lord: and ſuch nearly is the practice as obſerved by certain perſons. Thus he who takes the eſtate of another muſt give food to his widow and the reſt, whether ſhe be daughter-in-law or ſiſter-in-law *of the heir*. If he cannot ſupply her maintenance, he muſt not take the eſtate of the deceaſed, ſo long as ſuch a widow ſurvive. But the allotment of food and apparel to both theſe widows is not always indiſpenſable; for they are not enumerated in the text of MENU (Ch. VI, Sec. II, Art. I,) *among perſons who muſt be maintained at all events*. However, they ſhould, if poſſible, be ſupported; for, ſince VRĬHASPATI, treating of the Succeſſion of Widows (CCCXCIX), directs that ſhe who is firſt, by the text of MENU, in the order of ſucceſſion to the eſtate of him who leaves no male iſſue, ſhall honour learned and unprotected perſons and the reſt, the ſame ought likewiſe to be eſtabliſhed in the caſe of another heir.

This opinion of CHANDÉSWARA is ſtrictly conformable with the *letter of the* law, but it contradicts the opinion of JÍMÚTAVÁHANA. On this head, the laſt-mentioned author affirms, that the wife has a prior right before brothers and the reſt to the property of him who leaves no male iſſue; for the texts of YÁJNYAWALCYA and VISHNU (CCCXCVIII and CCCCXVIII) intend that order of ſucceſſion. But the word "women," in the text above cited (CCCCV 3), relates to females other than the *legal* wife of the deceaſed: and theſe are never entitled to the whole eſtate of one who leaves no ſon; for it is forbidden to diſtribute wealth "among women, ignorant men, or ſuch as neglect their duties;" and no ſpecial law ordains their ſucceſſion, as *it does* the inheritance of a wife and the reſt. But a woman *legally* eſpouſed, a daughter, and the reſt, do inherit, by a ſpecial law, the eſtate of him who leaves no male iſſue; for they are not barred by the general precept.

 CCCCXIII.

## CCCCXIII.

Wealth was conferred for the ſake of defraying ſacrifices; therefore diſtribute it among honeſt perſons, not among women, ignorant men, or ſuch as neglect their duties*.

Accordingly the king, who ſucceeds, on failure of all heirs, to the eſtate of any man except a *Brāhmana*, muſt maintain the wife of the late proprietor, as ordained by Náreda (CCCCV 3); for, in ſpeaking of a legal wife, the eldeſt is meant. The ſeniority of wives is not regulated by age or good qualities, but by claſs (Book IV, v. XLVI). In ages other than the *Cali*, marriages were contracted in various tribes, and ſometimes with women of the four claſſes; in ſuch a caſe, that wife, among three or four, who was equal in claſs with her huſband, had precedence. Such is the order of ſeniority *by* claſs. If a *Brāhmana* have not eſpouſed a *Brâhmanî* woman, may not a *Cſhatriyá*, or, on failure of her, a *Vais'yá*, be his eldeſt wife? Therefore does the legiſlator add, "to all ſuch married men, the wives of the ſame claſs only "(not wives of a different claſs by any means) muſt perform the "duty of perſonal attendance, and the daily buſineſs relating to "acts of religion" (Book IV, v. XLVII).

## CCCCXIV.

Menu:—For he who fooliſhly cauſes thoſe duties to be performed by any other than his wife of the ſame claſs, when ſhe is near at hand, has been immemorially conſidered as a mere *Chandála* begotten on a *Bráhmaní*.

But it is conſequently admitted, that, on failure of wives equal in claſs, thoſe duties may be performed by one of another tribe: *however*,

* Cited at length in other chapters; but only partially quoted in this place. I inſert it here, for a reaſon which will appear at the end of the firſt Section of Chapter IX. T.

*however*, thoſe acts which may be done by his wife, who ſprung from a different claſs, muſt only be performed by one belonging to the tribe next below him. VISHNU declares it (Book IV, v. XLIX). Hence a *Bráhmaní* wife *performs thoſe duties* for a *Bráhmana*; on failure of her, the *Cſhatriyá*, in the caſe of the utmoſt diſtreſs; but not his *Vaiśyá* or *`Súdrá* wives, though actually eſpouſed: ſuch is the opinion of JÍMÚTAVÁHANA. Admitting that *Vaiśyá* and *`Súdrá* women may not aſſiſt him in the performance of religious duties, ſtill what can oppoſe their ſeniority on failure of other wives ſuperior in claſs? This is objected by certain authors: ſtill, however, no difficulty enſues; for, if a *Bráhmana* have only eſpouſed women of the commercial and ſervile tribes, the *Vaiśyá*, but not the *`Súdrá*, may in that caſe inherit as his wife: but, if women of the four claſſes have been eſpouſed, the *Cſhatriyá* and the reſt are entitled to maintenance only, becauſe they are not *legal* wives* *in a ſtrict ſenſe*. It ſhould not be objected, that ſtill the obligation on the king to maintain the inferior wives of the proprietor is not appoſite, becauſe the *legal* wife alone does in that caſe inherit the eſtate. If ſhe be dead, or if the inheritance be refuſed by her, it may be neceſſary that *the other wives or concubines* ſhould be maintained by the daughter, brother-in-law, or other heir, or, *laſtly*, by the king. This may ſuffice on the ſubject of marriages contracted in the four claſſes; for they are now prohibited. It has been, however, noticed by JÍMÚTAVÁHANA to obviate the ſeeming contradiction between texts of legiſlators.

Conſequently the wife legally eſpouſed is ſole heireſs of the eſtate of her lord, whether ſeparated or undivided, whether re-united or remaining diſunited, although a daughter and the reſt be living. But "wife" *(bháryá)*, in the text of DÉVALA, ſignifies legal wife *(patní)*; for it relates to the ſpecial caſe *of the diſtinguiſhed one*. "Order," mentioned in that text (CCCCIV), alludes to the ſequence propounded by YÁJNYAWALCYA and the reſt. In the text of PAIT'HÍNASI (CCCCX), the conſtruction muſt be taken from remote terms; the eldeſt wife, or the father or mother, ſhall take the eſtate of him who leaves no male iſſue; on failure of them, it goes to the brother. This precept of law is thus



* Throughout this gloſs on V. ccccv, *patní* is employed as ſignifying the firſt or legal wife; and *bháryá*, as ſignifying any other wife inferior in rank. T.

thus propounded by him. In no text ordaining the allotment of a competent maintenance does the term legal wife *(patní)* occur. RAGHUNANDANA and the reſt, following the opinion of HELÁYUDHA and the author of the *Calpateru*, thus reconcile the ſeeming contradiction. This alone is accurate.

In following the opinion of CHANDÉSWARA, the practice of good men is infringed by admitting the prior claim of a brother; and that opinion contradicts the text of MENU (CCCCXXXIV). According to the interpretation of JÍMÚTAVÁHANA, if a man die leaving two wives equal in claſs, the eldeſt alone has a right to his eſtate: for, on the concurrent texts of DACSHA and VISHNU (Book IV, v. XLIX and LI), and by the law above cited, the term *legal* "wife" *(patní)* ſignifies her who was married from a ſenſe of duty.

MADANAPÁLA holds generally, that among wives of all tribes a diſtribution ſhall be made as among ſons of four claſſes. He adds, after the death of the woman, on failure of her own daughters and their male iſſue, the daughter of another wife of her huſband ſhall ſucceed. Hence it appears to be his opinion, that, after the death of a woman, her heirs ſhall inherit the property. According to the interpretation of RAGHUNANDANA, JÍMÚTAVÁHANA, MISRA, and CHANDÉSWARA, the heirs of her huſband claim the inheritance, a text cited under one title being explained as carrying an alluſion to another; but, according to MADANAPÁLA, the ſame text being explained as confined to the title under which it is placed, the heirs of the wife take the heritage. This conciſe expoſition may ſuffice.

On the point above noticed, the opinion of JÍMÚTAVÁHANA cannot be ſet aſide by that of CHANDÉSWARA, becauſe they are equal in merit and defect: but ſome trifle muſt be given to diſloyal wives. In like manner, it appears, from the condition "ſtrictly performing the duties of widowhood," that a mere competency for ſubſiſtence ſhall be allotted to women, who, though not guilty of adultery, do not ſtrictly perform the duties of widowhood. Since a ſon devoid of good qualities is declared incapable of inheriting (CCCXIX 3 and 4), ſurely the ſame ought to be eſtabliſhed if a wife be deſtitute of virtue: but if ſhe perform ſome of the duties of widowhood, ſhe has a title to the eſtate, becauſe ſhe does not wholly fail in obſerving ſuch duties.

But

But others argue, becaufe the text above cited (CCCCIX) in effect expreffes, that a widow devoid of good qualities fhall have food and apparel only; and fince it is declared by the text of *Vriddha* MENU (CCCCVIII), that fhe only has a title who ftrictly performs the duties of widowhood; and fince VRĬHASPATI, immediately after ordaining the fucceffion of the wife, propounds the feveral duties to be performed by her, fuch as obfequies and the like (CCCXCIX); and fince a wife confers no benefits on her lord, if fhe be not virtuous; it follows, that a virtuous widow inherits the eftate, but one devoid of good qualities has no claim: the rule is not deduced from the difference of wives equal and unequal in clafs; for, inferiority of tribe is not expreffed in any one text concerning the allotment of a competency for fubfiftence; and it is reafonable that a wife unequal in clafs fhould, in this cafe alfo, receive a fhare, in the fame form with partition between the fon of a wife equal in clafs and the fon of one belonging to an inferior tribe: however, unequal diftribution according to *the* clafs *of the women*, and partition *of any fort* between wives of the fame hufband, have not been noticed by any legiflator. What then is the purport of the text of PAIT'HÍNASI (CCCCX); fince it would contradict the practice of good men, if the interpretation of CHANDÉSWARA be followed; fince it is feemingly inconfiftent with the text of MENU; and fince there would be no certainty, if remote terms be joined in conftruction, for the fame is alfo poffible in the texts of YÁJNYAWALCYA and the reft? If a woman, whofe hufband is deceafed, raife up two fons to him by appointment of her fpiritual parent, and, abandoning them, cohabit with the natural father of thofe children; in that event, fhould any of thofe fons of the wife die leaving no male iffue, the text of PAIT'HÍNASI is applicable to the cafe: and, in that inftance, "parents" muft be underftood to fignify the father and mother of his natural mother. A wife not eldeft is in every cafe debarred by a brother and the reft: or elfe this precept, "the effects *of the deceafed* go to his brother," relates to property acquired with fupplies from that kinfman's eftate.

According to the opinion of JÍMÚTAVÁHANA, fince the wife has an intereft in the wealth of her hufband during his life (CCCCXV), and fince there is nothing to annul her property after his deceafe, how can her hufband's brother and the reft, *in*

*any instance*, have a claim to the estate? To this it is answered, No; for it is established that her property is actually lost by the lapse of her husband's right. Accordingly the property of the wife is devested even when the effects are given away by her lord. Those who affirm that the allotment of a share *to the mother*, when partition is made among sons *, is founded on her ownership of the father's estate, because she was his wife, accordingly contend, that a share of the distributed wealth must be allotted to a wife of the father, whether she have or have not a son, and whether partition be made before or after the death of the father. Accordingly BHAVADÉVA remarks, on the succession of a widow, that a wife had a claim on the estate of her lord even during his life, by the texts of DATTA (CCCCXV); and, after his death, she shall have an equal share with her son, by the same authority (CCCCXV 2). Does it not consequently appear, that, according to the opinion of these lawyers, the wife of the proprietor shall receive a share from his brother and the rest, as she would from his son?

## CCCCXV.

DATTA:—Wealth is common to the married pair †.

2. After the death of her lord, the mother shall have an equal share with her sons.

To the question thus proposed the answer is, the exigence of such secondary property is supplied by allotting a competency for subsistence; but an equal share is given by sons, because she is, in respect of them, most venerable.

But the property of her husband, devolving on the wife *by the failure of nearer claimants*, descends, after her death, to the legal heirs of her husband, on the concurrent opinion of many authors.

CCCCXVI.

* There has been singular inaccuracy in the quotation of texts concerning the shares of mothers; an important law, here quoted, is unnoticed by the compiler in its proper place.

"The mother of sons, making a partition after the death of their father, shall also take a share." T.

† I can no-where find the text cited at full length: this much of it has been frequently quoted; but the author of it is here named for the first time, and he does not rank among legislators. T.

## CCCCXVI.

VRĬHASPATI:—Thoſe near or diſtant kinſmen, who, becoming her opponents, injure the property of a woman, let the king chaſtiſe with the puniſhment of a robber.

The widow muſt defray the education and nuptials of an unmarried daughter. Such is the ſucceſſion of a wife to the eſtate of him who leaves no male iſſue.

II. On failure of her, the eſtate deſcends to the daughter, by the text of YÁJNYAWALCYA (CCCXCVIII) and rule of VISHNU.

## CCCCXVII.

VISHNU:—The wealth of him who leaves no male iſſue goes to his wife; on failure of her, to his daughter; if ſhe be dead, to the ſon of a daughter; if there be no ſuch *grandſon*, to the father; in his default, to the mother; on failure of her, to the brother; if he be dead, to the brother's ſons: in default of theſe, to the remoter kinſman; on failure of kindred, to one deſcended from the original ſtock; if there be none ſuch, to the fellow-ſtudent; on failure of him, to the king, except the property of a *Bráhmana**.

MENU and VRĬHASPATI propound the daughter's claim (CCX and CCXXIV 1); the laſt-named legiſlator declares what qualifications are required of a daughter that ſhe may inherit the eſtate of her father (CCXXIV 2). The order of ſucceſſion, ſays BÁLARÚPA, is, in this caſe, the ſame which is ordained by the text of PARÁS'ARA.

CCCCXVIII.

* Partially quoted in this place. There are many various readings of this text. I here combine the readings moſt approved. T.

## CCCCXVIII.

PARÁŚARA:—The unmarried daughter ſhall take the inheritance of the deceaſed, who left no male iſſue; and, on failure of her, the married daughter.

It ſhould not be argued, that all this relates to the daughter who has been appointed to raiſe up iſſue for her father; and that the term "not appointed," in the text of VRĬHASPATI (CCXXIV 2), relates to her who is ſelected by an implied intention, without a formal declaration. It is ordained by MENU, that, if a ſon exiſt, ſuch a daughter ſhall have an equal ſhare with him. MISRA.

Conſequently a daughter, though not appointed to raiſe up iſſue to her father, ſhall inherit, as appears from the terms "him who left no male iſſue." Are not thoſe terms employed to ſhow that ſhe takes the whole eſtate of him who leaves no ſon born in lawful wedlock; for the texts relating to the ſucceſſion of a daughter, and of her ſon, are delivered by MENU among precepts relative to an appointed daughter? Since he has propounded no ſeparate law concerning the claim of a daughter, theſe texts muſt be taken as intending by implication the ſucceſſion of daughters in general. It ſhould not be objected, that their right of inheritance is not ordained by codes of law. The text of YÁJNYAWALCYA, expreſſing "this rule concerning the heritage of him who has gone to heaven leaving no male iſſue extends to all claſſes" (CCCXCVIII 2), declares the ſucceſſion of a daughter to the eſtate of him who leaves no ſon begotten or adopted, neither one born in lawful wedlock, nor an appointed daughter or the like; and the text of VISHNU conveys the ſame implied ſenſe. According to the opinion of thoſe who contend that the ſon of the appointed daughter becomes the adoptive ſon of her father, there is no difference whatſoever between an appointed daughter and any other female offſpring. Neither can the terms "leaving no male iſſue," ſignify 'leaving no ſon 'properly ſo called.' Were it ſo, the wife and the reſt would inherit in order, although a ſon of the wife begotten by a kinſman,

man, or other adoptive ſon, exiſt. Nor is that intended by lawgivers and commentators. This conciſe expoſition may ſuffice.

On failure of unmarried daughters, a married one claims the heritage by the text of PARÁŚARA above cited (CCCCXVIII). Such is the notion of JÍMÚTAVÁHANA, and many other authors. CHANDÉSWARA and the reſt do not contradict that opinion; it ſhould therefore be adopted. A diſtinction is admitted in reſpect of married daughters: ſhe who may poſſibly have a ſon, and ſhe who actually has male iſſue, ſhall alone take the inheritance, not ſhe who is barren or widowed; for the text of NÁREDA ſhows, that daughters confer benefits through the means of their offspring; and precepts of MENU, on the ſubject of Inheritance, declare the conferring of benefits to be the ſole ground on which reſts a title to take the heritage (CCCLXX and CCCCXXXIV).

## CCCCXIX.

NÁREDA:—If there be no ſon, the daughter *is heireſs* by parity of reaſon; for ſhe keeps up the progeny, *ſince* a ſon and a daughter both continue the race of their father.

Here progeny intends ſuch deſcendants as give the funeral cake; for, he who does not offer it, conferring no benefit, is in nothing different from one who is not a deſcendant, or who is the offspring of another man. But a daughter's ſon is a giver of oblations; not his ſon, nor her daughter; for the funeral cake ſtops with him. So JÍMÚTAVÁHANA, with whom DICSHITA concurs. Conſequently, neither a daughter whoſe ſon is dead, but who has a ſon's ſon, nor ſhe who has female iſſue, inherit, though they were not barren.

## CCCCXX.

DÉVALA:—To unmarried daughters a nuptial portion muſt be given out of the eſtate of the father; and his own daughter, lawfully begotten, ſhall take,

take, like a ſon, the eſtate of him who leaves no male iſſue.

Under this text, the virgin daughter, by a woman equal in claſs, and legally eſpouſed, can alone claim the inheritance; not a daughter by a woman not legally eſpouſed, nor one of a different claſs, nor one begotten on the wife by a kinſman, nor any other adoptive daughter; for ſons begotten on a wife by a kinſman, and other adoptive ſons, being noticed by the law, are alone legal iſſue; but ſuch daughters being unnoticed in codes of law are not ſo. The ſame diſtinction ſhould be alſo underſtood in reſpect of a married daughter, who would be debarred by an unmarried one.

On this ſome lawyers remark, ſince the text of NÁREDA, which propounds *ſucceſſion in right of* benefits conferred, is not cited by RAGHUNANDANA under the head of Succeſſion of female iſſue, therefore barren and widowed daughters inherit immediately after thoſe who have or may have ſons. This ſeems to be his opinion. It ſhould not be aſked, how can they claim the inheritance, ſince they confer no benefits? Were this a valid objection, it would contradict the aſſertion of JÍMÚTAVÁHANA and RAGHUNANDANA, when treating of Succeſſion to the ſeveral property of a woman, that barren and widowed daughters ſucceed on failure of others, becauſe they alſo are iſſue *of the mother*. It ſhould not be argued, that they inherit as iſſue *of the mother*, becauſe a text, treating of Succeſſion to the ſeveral property of a woman, expreſſes, "if a married woman leave no iſſue, her "huſband ſhall take her property." Since the words "daughters" and "married" occur under this head, both may inherit as married women and as daughters. It ſhould not be objected, that the commentator has not expreſsly ſaid, that barren and widowed daughters may claim the heritage in this inſtance, as he has ſaid that they ſucceed to the ſeveral property of their mother; he does not therefore admit the ſucceſſion of barren and widowed daughters. Neither does he, like JÍMÚTAVÁHANA, affirm, that they do not inherit *in certain caſes*; he may have left unnoticed the contrary aſſertion of a former author, although his own opinion *admits their ſucceſſion*.

It ſhould not be argued, that benefits conferred through the

oblation of the funeral cake in the *párvana* conſtitute the ſole ground on which reſts the right of ſucceſſion to the property left by a man, as appears from the text of MENU (CCCCXXXIV) immediately following the precept above cited (CCCLXX); but any benefit whatſoever is ſufficient foundation of a title to inherit the ſeveral property of a woman. There is no authority for ſuch an inference; and pupils and the reſt, though not conferring ſuch benefits, do ſucceed to the property left by a man. Nor ſhould it be anſwered, they who afford not ſuch advantages only inherit the eſtate left by a man, on failure of perſons conferring benefits through the oblation of a funeral cake in the *double ſet*, or *párvana:* were it ſo, the ſucceſſion of a daughter would be contrary to law. Nor ſhould it be argued in reply, that ſhe confers ſuch benefits through the means of her ſon: were it ſo, a ſiſter, a father's ſiſter, and the reſt, would alſo claim the heritage. Nor ſhould it be anſwered, that women, not expreſsly pronounced *capable of inheritance*, are excluded by a text above cited (CCCCXIII): ſuch a maxim is not infringed by affirming the title of barren daughters and the reſt to inherit the peculiar property of a woman, on failure of perſons who offer the funeral cake in the double ſet of oblations; and that maxim is not admitted in the caſe of property excluſively held by a woman. As a daughter's ſon, *in this inſtance*, ſucceeds before a great-grandſon in the male line, ſo does a daughter inherit in preference to a ſon's ſon.

If this inference be propoſed, the anſwer is, that is admiſſible; the barren and widowed daughters may ſuceeed on failure of heirs, including *diſtant* kindred, if a precept be found to this purport, "the pupil ſhall take the inheritance of him who leaves no "daughter," like the text above quoted, "the huſband ſhall take "the property if the woman leave no iſſue;" but if *other* female offspring have a *prior* title, and the barren and widowed daughters have no ſubſequent claim, while a giver of the funeral cake in the double ſet of oblations exiſts, they do not ſucceed on failure of heirs, including diſtant kindred, ſince no text ſhows their title directly or indirectly. Such is the accurate opinion of JÍMÚTAVÁHANA.

Introducing the appointed daughter into this diſquiſition, JÍMÚTAVÁHANA had variouſly diſcuſſed the ſubject. Since the appointment

appointment of a daughter *to raise up issue for her father* is now forbidden, the argument is not here inserted for fear of unnecessarily enlarging the book, but it may be thus abridged: if the appointed daughter die having borne no son, her wealth shall be taken by her sister and the rest; but if she die after bearing a son, who deceased, it shall be inherited by her husband and the rest.

After the death of a daughter, by whom shall property which goes to her be taken? To this JÍMÚTAVÁHANA replies, if she was invested with the right while unmarried, and die after a subsequent marriage, it descends, on the failure of her who was invested with the right, to those married daughters and so forth on whom it would have devolved upon the *original* failure of an unmarried daughter never invested with the right: it does not descend to her husband and the rest, for that *succession* relates to the peculiar property of women. The meaning is, since it is shown by a text of law (CCCCLXXVII 2), that, on failure of a wife invested with the right *of succession*, those heirs of the former owner, who are declared entitled to the inheritance on *the original* failure of a wife never invested with the title, namely, a daughter and the rest, shall succeed to that property; the right of a daughter, and of a daughter's son, who are inferior to a wife, is therefore proved by the rule, *that the greater includes the less*, exemplified by the staff and bread: or wife is an indefinite term intending women in general; the same inference follows.

If they be inferior to a wife, as here affirmed, does it not follow that the heirs of the original owner shall take the property after the death of the daughter's son, or even after the demise of the pupil and the rest? Neither is this consistent with common sense, nor acknowledged by numerous other authors, nor conformable with logical reasoning; for no authentic text ordains it, and the son of a daughter's son ought not to be prevented from taking the estate of his father, *the inheritance of* which falls within the seven lawful means of acquiring wealth. Therefore does the commentator add, "or wife is an indefinite term," &c. Consequently, the making apposite what was not pertinent in respect of wealth devolving on a wife and the rest, is continued in the last part *of the gloss;* apprehending a defect in the former, the commentator reconciles it in the latter exposition.

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To this *ſome* lawyers object the want of proof, that her own female iſſue, and the ſon of her ſiſter, and other heirs of a daughter; can only claim the peculiar property of the woman; for the texts of MENU and VRĬHASPATI (CCCCLXXXV and DXIII) ordain *generally* the ſucceſſion of daughters and the reſt to any property of their mother and ſo forth; and although reſtricted by the precept of CÁTYÁYANA (CCCCLXXVII 2), which numerous authors conſider as relating to wealth which has devolved on the wife by failure of nearer heirs, ſtill there is nothing to reſtrict thoſe texts in other caſes. Again; if a daughter, a ſiſter's ſon, and others, can only take the peculiar property of a woman, then, ſhould wealth have been acquired by her mother, or by his mother's ſiſter and the reſt, in the practice of arts, commerce, or the like, there would be no certainty who may claim it after the death of the acquirers. But this commentator admits the ſole right of a woman to that which ſhe herſelf earns by arts or the like; for he explains the text of MENU, (Book III, Chap. I, v. LII 1), as merely implying her ſubjection to control; and expounds "the dominion of her huſband," in the text of CÁTYÁYANA (CCCCLXX), as ſignifying his independent power by which he may ſeize it, even though not ſuffering extreme diſtreſs: although the dominion of a huſband be there propounded, the uncertainty in regard to wealth which a widow has gained by arts or the like, is not obviated: the dominion of her huſband's family and the reſt over her *acquiſitions* does not follow; for no law ordains it. If it be ſaid, wealth which a woman acquires during coverture by arts or ſimilar means is not her peculiar property, by the terms of the text (CCCCLXX), but any other effects are ſo; and the expreſſion, "the ſeparate property of a woman is declared to be ſixfold" (CCCCLXII, &c.), is intended to except a leſs, not a greater number, as is acknowledged by commentators; the anſwer is, there ſtill is an inconſiſtency on the opinion of JÍMÚTAVÁHANA: for the wealth which a woman acquires during coverture by arts or the like, cannot well be comprehended *in her ſeparate property;* and, if it were comprehended in it, her huſband would not have independent power over it. Does not the peculiar property of a woman ſignify generally that wealth poſſeſſed by her over which her huſband ought not to exerciſe independent power, and

that

that which ſhould be inherited by daughters and the reſt, excepting what is acquired by arts or ſimilar means; for different ſenſes of a term are in many inſtances admitted according to the difference of the ſubject? Then, what is the definition of the term "peculiar property of a woman?" If *it be explained*, wealth *received* on her account, excepting that which has devolved on her by failure of nearer heirs; what is the uſe of that exception, or whence is it deduced? Again; the obſervation, "wife is an indefinite term," is impertinent; for the word wife is not contained in the text (CCCCLXXVII 2), and there is no proof that it ſhould be underſtood; it is only inferred from the correlative term huſband. It ſhould not be argued, that it does not follow, from the inſertion of the correlative term, that the wife of the late proprietor is intended; for it is not ſo ſhown in the maxim, 'preſerving the bed of her lord inviolate, ſhe may enjoy the eſtate of her ſon,' nor in other inſtances: neither can that be inferred from the words "gift *or heritage* (dáya) of her huſband," which occur in the preceding text (CCCCLXXVII 2), for thoſe terms, explained as ſignifying wealth given by her huſband, might be repeated *in interpreting the ſubſequent text, which would therefore relate to ſuch gifts of her huſband:* of courſe the word wife muſt be underſtood, *not inferred. This ſhould not be argued:* for if ſome term muſt be underſtood, it may be woman, or ſome other equivalent word; and the ſubject, governed by the active term "enjoy," being ſought, "gift of her huſband" muſt be repeated *from the preceding text*, or "eſtate of her huſband devolving on her" muſt be underſtood. Again; *this text does* not convey a general maxim, that a "woman ſhall enjoy the heritage;" for ſiſters and the reſt might *in that caſe* obtain the eſtate left by a brother: it is merely an explanatory precept limiting *the right* to ſimple enjoyment: and this is founded on the text of another legiſlator, expreſſing, "ſhe ſhall only enjoy "the eſtate which has devolved on her by failure of nearer "heirs, and not give it away or ſell it." There is no proof that wife here ſignifies woman in general. If it be ſaid, a ſufficient argument may be drawn from this reaſoning, 'ſimple enjoyment being granted to a wife, who is firſt in the line of eventual ſucceſſion to property devolving *on collaterals*, the ſame is alſo proper in the caſe of other female heirs;' the laſt diſtinc-

tion would be ſuperfluous, ſince it muſt be *equally* admitted, that a daughter's ſon, a pupil and the reſt, are likewiſe incapable of giving away or ſelling the eſtate: the wife is not firſt in the eventual ſucceſſion to an eſtate, but the ſon alone is *firſt heir*; the law knows not any diſtinction between eventual and direct ſucceſſion: this, and the words wealth devolving *on collaterals*, are uſed on ſome occaſions by certain authors for the ſake of their accepted ſenſe. However, the term direct *or lineal* ſucceſſion is employed for the purpoſe of *explaining, that the heir is ſubject to* the controul of his own ſon and the reſt, in the diſpoſal of wealth which has devolved on him as ſon, grandſon, or remoter deſcendant *of the former proprietor*. Therefore wealth devolving on a ſon or other *lineal* ſucceſſor, and on a wife or *collateral* heir, muſt be called heritage, becauſe it is obtained in right of affinity or relation. Thus, if the maxim be eſtabliſhed, that a wife ſhall *ſimply* enjoy the eſtate, a queſtion ariſing on the expreſſion "after *demiſe*, the legal heirs ſhall take it;" after the death of the wife muſt be aſſumed, 'not after the *demiſe of any* woman.' This term here ſignifies a female human being; and wife denotes a married woman. By diſcuſſing the objections and anſwers on the inſertion of theſe ſeveral terms, *and the conſequent inferences*, the volume would be needleſsly enlarged: both *the queſtions and the anſwers* are therefore omitted. But though not directly ſupported by the text of any legiſlator, or concurrence of any commentator, the opinion delivered by JÍMÚTAVÁHANA is reſpected by many lawyers. However, he only ſays, that wealth which has devolved on a daughter goes after her *death* to the heir of her father; he has not expreſsly affirmed, that a daughter ſhall not aliene an eſtate which has deſcended to her: but if it be ſaid, the general maxim, that after a woman the legal heirs *of the former male proprietor* take the eſtate, cannot be deduced without eſtabliſhing a general rule that a woman ſhall *merely* enjoy an eſtate which has devolved on her, it then follows that ſuch is his meaning, but not otherwiſe.

According to the opinion even of thoſe lawyers who acknowledge the property of the huſband in that which his wife acquired by arts, ſhe ſhall *excluſively* obtain ſuch wealth after the death of her huſband, even though a ſon or other deſcendant exiſt; and after her death her own heirs ſhall take it: otherwiſe, by parity of

of reaſoning, a father having dominion over his unmarried daughter, ought to have property in wealth which ſhe acquires by arts; yet that has not been mentioned by any legiſlator.

If the daughters be numerous, a diſtribution is made. Such is their ſucceſſion.

III. On failure of female iſſue, the ſon of a daughter is heir, according to JÍMÚTAVÁHANA and RAGHUNANDANA. BHAVADÉVA, obſerving "daughters" expreſſed in the plural number in the text of YÁJNYAWALCYA (CCCXCVIII), and inferring the implied comprehenſion of daughters both *fruitful and ſterile*, and of the daughter's ſon, becauſe the plural number would otherwiſe be unmeaning, alſo *admits this ſucceſſion*. The reaſoning approved by JÍMÚTAVÁHANA is pertinent on this interpretation; for he pronounces both daughters capable of inheritance. The word taken in a ſecondary ſenſe here intends both a daughter and her male offspring, as ſon in the text of YÁJNYAWALCYA (CCCXCVIII 2) ſignifies *male iſſue, that is*, a ſon, a ſon's ſon, and the ſon of ſuch a grandſon. The ſenſe is the ſame in the text of DÉVALA (CCCCIV). But the reading of the rule of VISHNU, immediately after the words 'on failure of her, to the daughter,' "if ſhe be dead, to the ſon of a daughter" (CCCCXVII), is not acknowledged by JÍMÚTAVÁHANA; for he has not cited that part of the rule under the head of Succeſſion of a daughter's ſon. That reading is approved by BHAVADÉVA. But the text of VISHNU, cited by GÓVINDA RÁJA, is univerſally acknowledged to be ſufficient proof of the right of a daughter's ſon.

## CCCCXXI.

VISHNU:—On failure of ſons, and of their male iſſue, the ſons of daughters ſhall obtain the property; for the male offspring of a ſon and of a daughter are equally qualified to perform obſequies for men of all claſſes.

CHANDÉSWARA alſo ſuggeſts the title of a daughter's ſon in preference to brothers, by citing the text of VRĬHASPATI, with theſe

these words premised, 'immediately after a daughter, and the son of a daughter.'

## CCCCXXII.

VRĬHASPATI:—On failure of them, uterine brothers, and sons of brothers, kinsmen bearing the same family name, pupils, and learned priests, are entitled to possess the estate.

From the difference of benefits conferred, and on the reason of the law, his title ought to take effect even before that of parents. The benefit conferred consists in the oblation of a funeral cake to the proprietor by the son of his daughter (CV). In respect of another world, the benefit conferred by parents consists in their sharing the funeral cake which should have been offered by the proprietor; but, in succession to heritage, procreation appears to constitute a superior claim compared with the acceptance of the funeral cake: and the oblation of it *does so, when* compared with procreation; for, it is shown that a son and the rest take the heritage, although a father or other ancestor be living.

"On failure of them," that is, in default of a daughter, and of a daughter's son, mentioned in preceding texts, "brothers" are the heirs. Such is the meaning; and this supposes the failure of parents, as will be hereafter explained. The preceding texts are two, one of VRĬHASPATI quoted in a former chapter (v. CCXXIV 2), and another (CCCCXI) cited by BHÓJADÉVA, with these words premised, "VRĬHASPATI, on the succession of a daughter who is or is not appointed *to raise up issue to her father*."

It should be here remarked, since GÓTAMA declares the mere intention to be a sufficient cause of considering a daughter as appointed to raise up issue to her father (CCXXVII), "not appointed" might be explained, not nominated by an express declaration that she is taken to propagate her father's race, *but* appointed by an implied intention; yet it is almost fruitless so to expound it, and it contradicts many authors: that interpretation should not therefore be adopted. However, this text of VRĬ-

HASPATI does not ſolely propound the right of a daughter's ſon, *whoſe mother was not ſelected to raiſe up iſſue to her father;* for it may be appoſite, as relating to the ſon of a daughter appointed by an implied intention. Conſequently, on failure of the givers of a principal funeral cake, namely, the ſon, the ſon's ſon, and the ſon of ſuch a grandſon, the daughter's ſon, who gives a ſecondary funeral cake in the double ſet of oblations, is heir: that is propounded as confirmed by the reaſon of the law.

Then the title of a ſon's grandſon, whether in the male or female line, may be ſuppoſed to precede that of both parents, by parity of reaſoning, and becauſe the text of VRĬHASPATI is nothing to the purpoſe. No; for this only declares the right of inheritance founded ſolely on benefits conferred; and the precept of VISHNU, cited by GÓVINDA RÁJA (CCCCXXI), is the ground on which reſts the title of a daughter's ſon; and it is declared that he confers benefits (CV). It ſhould not be argued, that the text of VISHNU relates to the ſon of an appointed daughter. The terms "who leaves no ſon nor ſon's ſon" would be inexplicable. It cannot be true, that the ſon of an appointed daughter, though acknowledged to be a ſon's ſon in contemplation of law, claims the eſtate after the iſſue of a ſon begotten in lawful wedlock; for it is eſtabliſhed, that his mother has a ſhare *of the eſtate* at the ſame time with the ſon of the body (CCVI).

Thus the grandſons of a ſon, both in the male and female line, are not comprehended in the texts of YÁJNYAWALCYA and the reſt, by taking the terms *of the precepts* in a ſecondary ſenſe. Accordingly, no ancient author has aſſerted the title of both to take the heritage.

As for the remark, that the texts of MENU, which are cited by JÍMÚTAVÁHANA to prove that the right of a daughter's ſon (CCXX γ' & ά & CCVII,) relate to the ſon of an appointed daughter, becauſe ſhe is mentioned in the context; the right of a grandſon in the female line muſt nevertheleſs be ſomehow deduced from the implied ſenſe of theſe texts, to obviate diſparagement of the legiſlator, ſince it has not been ſeparately declared by MENU; like the expreſſion "the ſun is ſet" in ſpeaking of ablutions at twilight, *and of other duties to be performed at the cloſe of the day.*

The learned do not poſitively hold, that, after the death of a daughter's

daughter's ſon, the heirs of his maternal grandfather ſhall take the wealth which had devolved on him; but his ſon or other heir ſhall alone take that property.

Again, if daughter's ſons be numerous, a diſtribution muſt be made. In that caſe, if there be two ſons of one daughter and three of another, five equal ſhares muſt be allotted: they ſhall not firſt divide the eſtate into two parts, and afterwards allot one ſhare to each ſon; for ſuch a mode of diſtribution is only ordained in partition among the ſons of ſons: and the reaſoning is not equal, for a ſon's ſon, whoſe own father is dead, receives a ſhare from his uncle; but the daughter's ſon, whoſe mother is deceaſed, does not receive a ſhare from his mother's ſiſter.

As the daughter begotten by a man himſelf on his wedded wife equal in claſs, is alone heireſs of her father's eſtate by the text of Dévala (CCCCXX), ſo the ſon of ſuch a daughter alone ſucceeds, as grandſon, to the eſtate of his maternal grandfather. This alſo ſhould be underſtood. From the expreſſion "who leaves no ſon," it appears, that, on failure of appointed daughters, the right devolves on one who has not been yet given in marriage; and hence alſo it muſt be underſtood, that the ſon of any daughter, though *ſhe were* not appointed to raiſe up iſſue to her father, is heir.

But ſome lawyers contend, that a daughter's ſon can *only* claim the ſucceſſion on failure of all the heirs enumerated, *from the wife* to the king (CCCXCVIII); or, ſince there can hardly be a failure of the ſovereign, in default of all thoſe heirs preceding him. That is wrong; for, immediately after *mentioning* the daughter's ſon, follows the text of Vrĭhaspati, "on failure of him, "brothers, &c." (CCCCXXII); and he does confer benefits. Madanapála alſo affirms the ſucceſſion of a grandſon in the female line, immediately after a daughter. The right of inheritance does not ſolely follow the benefits conferred.

Misra conſiders the texts of Vríhaspati and the reſt as relating to the ſon of an appointed daughter; and he explains the precept of Vishnu alſo CCCCXXI) as relating to the ſon of an appointed daughter, and as intended to authoriſe his ſucceſſion to the whole eſtate, like the text, "all theſe adopted ſons are "pronounced heirs of a man who has no ſon by himſelf begot- "ten" (CXC 3).



But

But GÓVINDA RÁJA contends, that the claim of a grandſon in the female line precedes even that of a daughter. It is wrong; for this grandſon is ſecondary in compariſon with the daughter, ſince he becomes the offspring *of his grandſire* through her; and her prior right is proved, becauſe VRĬHASPATI compares her ſon's claim to her own (CCCCXI).

On the death of a daughter's ſon, who has received the heritage of his maternal grandfather, his own ſon claims the eſtate; becauſe it had become the property of his father, and becauſe no expreſs law reſiſts his right. This ſhould be noticed. Such is the ſucceſſion of a daughter's ſon.

IV. On failure of them, the mother is heireſs by the text of YÁJNYAWALCYA (CCCCXCVIII): thus the *Retnácara* and *Chintámeni*. It ſhould not be argued, becauſe the term "both parents" ſignifies father and mother, that both ſhall inherit jointly. The text of VISHNU propounds their ſucceſſive rights; "on failure of her, *(namely, the widow of him who dies leaving no male iſſue,) the wealth* goes to his daughter; if ſhe be dead, *(and leave no ſon,)* to the father; in his default, to the mother" (CCCCXVII). Accordingly VRĬHASPATI propounds the ſucceſſion of the mother, without reference to the father:

## CCCCXXIII.

VRĬHASPATI:—The mother muſt be conſidered as heireſs of her ſon, who dies leaving neither wife nor male iſſue; or, with her conſent, the brother *may be heir*.

Here "with conſent" ſignifies with the acquieſcence of the mother. But the *Párijáta* expreſſes, the term is illuſtrative, comprehending the father: the meaning therefore is, 'with conſent of both parents.' Of what uſe is the ſanction of the father, for the ſame effect follows the aſſent of the mother, who had a right to the ſucceſſion? That is wrong; for indirect acquieſcence is here meant, which may be expreſſed in theſe or other words, "I take it not:" there is no occaſion to ſuppoſe a *formal* declaration of conſent, in theſe words, "do you take it."

MENU

Menu alſo declares, that the mother inherits (CCCCXXIV). The ſucceſſion of the father on failure of her is intended by Yájnyawalcya, as appears from his precept, and from the texts of Vishnu (CCCCXVII) and of Menu (CCXXIII). Such is the opinion delivered in the *Retnácara* and *Chintámeni*.

## CCCCXXIV.

Menu :—Of a ſon dying childleſs, *and leaving no widow*, the mother ſhall take the eſtate ; and ſhe alſo being dead, the paternal grandmother ſhall take the heritage *on failure of brothers and nephews*.

But Jímútaváhana and the reſt read the text of Vishnu (CCCCXVII), " on failure of her it goes to his daughter ; if there be none, to the father ; in his default, to the mother." Conſequently, on failure of the daughter's ſon, the father is heir ; in default of him alſo, the mother : as for the texts of Menu and Vrĭhaspati (CCCCXXIV and CCCCXXIII), they muſt be underſtood *as appoſite* on the failure of the father. The argument *on which this reſts* is ſubjoined : a daughter's ſon is preferable to a father, becauſe he offers a funeral cake to the deceaſed, and two which the deceaſed was bound to offer ; but the father *would have* ſhared a funeral cake offered by the late proprietor, *if the latter had ſurvived*, and preſents two which he was bound to offer : the father is therefore inferior to the daughter's ſon in reſpect of one funeral cake, becauſe the acceptance *of it* is ſubordinate to the oblation ; and the mother is yet inferior to him, becauſe ſhe merely ſhares a ſingle cake *which would have been* offered by the deceaſed. A text of Menu (CCLIV) is alſo proof of the inferiority of the mother compared with the father. Her ſuperiority above the brother and the reſt will be conſidered in its place.

The different rules of deciſion being founded on different readings of the text of Vishnu, there is no certainty on this point ; for neither reading can be rejected, ſince both are cited by *reſpected* authors. It ſhould not be anſwered, the argument delivered

livered by us, and other reaſons ſtated in the treatiſe of JIMÚTAVÁHANA, prove the ſuperiority of the father. More argument might be brought to prove the pre-eminence of the mother: for example, her importance declared in an authoritative text;

A mother ſurpaſſes a thouſand fathers, for ſhe bears and nouriſhes the child in her womb; therefore is a mother moſt venerable.

If the veneration due to her exceed the reſpect due to a father a thouſand fold, how can the text cited from the *Purána* by MÁDHÁVÁCHARYA be relevant?

By law, the father and the mother are two reverend parents of a man in this world; however adorable *the goddeſs of* the earth, a mother is *ſtill* more venerable:

2. But of thoſe two the father is pre-eminent, becauſe the ſeed is chiefly conſidered; on failure of him, the mother *is moſt revered;* after her, the eldeſt *brother.*

He himſelf thus reconciles the ſeeming contradiction; this relates to a father who gives *inſtruction to his ſon in* the *whole Véda*, after performing the ceremonies on conception and all other holy rites which perfect the twice-born man: otherwiſe the mother is moſt venerable. Accordingly the text of MENU is alſo pertinent.

MENU:—A mere *áchárya*, or *a teacher of the* gáyatri *only*, ſurpaſſes ten *upádhyáyas;* a father, a hundred ſuch *áchåryas;* and a mother, a thouſand natural fathers.

He who, for his livelihood, gives inſtruction in a part only of the *Véda*, or in grammar and other *védángas* and the like, is an *upádhyáya*, or ſub-lecturer; he who girds the pupil with the ſacrificial cord, and inſtructs him in the whole *Véda*, with the law

law of ſacrifice, and the myſteries or ſacred *upaniſhads*, is an *áchárya*. So MÁDHAVÁCHÁRYA, following the text of MENU*.

VYÁSA:—Ten months a mother bore her infant in her womb, ſuffering extreme anguiſh; fainting with travail and various pangs, ſhe brought forth her child;

2. Loving her ſons more than her life, the tender mother is *juſtly* revered: who could recite all her merits, even though he ſpoke a hundred years?

By citing other texts from the *Puránas*, the volume would be unneceſſarily ſwelled; for this reaſon they are omitted. The ſeeming difficulty is thus reconciled: title to reſpect is no cauſe of inheritance; were it ſo, who could take the eſtate while both parents exiſt? But benefits conferred by his own act, and near relation by the funeral cake, *are the grounds on which reſts the claim of an heir*: now, the father is ſuperior by the benefits which he confers; therefore he has the right of ſucceſſion, even though the mother be living: and the reading approved by JÍMÚTAVÁHANA muſt be followed in the text of VISHNU (CCCCXVII); for YÁJNYAWALCYA declares, "If two texts differ, reaſon, *or that which it beſt ſupports*, muſt in practice prevail, when the reaſon of law can be *ſhown*."

But other lawyers argue, if the eſtate of a ſon devolve on his mother while the father lives, ſtill the latter has the ſole right to it; for it is not her excluſive property, being different from gifts received before the nuptial fire, or at the bridal proceſſion or the like; and while her huſband lives, nothing is acknowledged to be her excluſive property, except that which was given to her.

The father is heir on failure of a daughter's ſon; and the mother, in default of the father: the opinion of JÍMÚTAVÁHANA and the reſt is reſpected by many lawyers, as that which ſhould be now followed in practice.

After the death of a mother, who has inherited the eſtate of her ſon, the heirs of her peculiar property ſhall not take the ſucceſſion, but the heirs of the ſon. So JÍMÚTAVÁHANA. It ſhall not

* Chapter ii, V. 140 and 141.

not be aliened by the mother in her life-time: this alſo is affirmed by the learned to be the opinion of JÍMÚTAVÁHANA. MISRA alſo aſſerts, that ſhe has no power to give away, or otherwiſe aliene, property which devolved on her *by failure of nearer heirs*. This lawyers affirm *to be a ſettled rule*.

V. On failure of the mother, brothers *take the eſtate*, by the texts of YÁJNYAWALCYA, VISHNU, VRĬHASPATI, MENU, GÓTAMA, (who uſes the word eldeſt as an illuſtrative term intending all brothers,) DÉVALA, and CÁTYÁYANA (CCCXCVIII, CCCCXVII, CCCCXXII, CCXXIII, CCCCIV, and CCCCXXV).

GÓTAMA:—The wealth of deceaſed brothers goes to the eldeſt *and the reſt*.

## CCCCXXV.

CÁTYÁYANA:—On failure of male iſſue, the father ſhall take the eſtate acquired by his ſon after partition, or the brother, or the natural mother, or the paternal grandmother, in regular order.

Here the order of ſucceſſion, to which the texts of DÉVALA and CÁTYÁYANA allude, follows *the precepts of* YÁJNYAWALCYA and the reſt. Such is the opinion of JÍMÚTAVÁHANA and others; CHANDÉSWARA alſo muſt be underſtood as aſſenting to that opinion: but MISRA, in expounding the text of CÁTYÁYANA, alleges a two-fold eſtabliſhed caſe; the father ſhall inherit what had been acquired by him, and the brother and the reſt ſhall ſucceed to that which had been gained by a collateral relation. On his interpretation, it muſt be inquired, what ſhall become of property inherited from anceſtors and ſo forth? CHANDÉSWARA infers, from a text above cited (CCCCX), that, on failure of a wife diſtinguiſhed by good qualities, of a daughter, and of a daughter's ſon, the brother is firſt heir of property which he who leaves no male iſſue had himſelf acquired: in default of brothers, both parents; or, if thoſe be dead, the wife not diſtinguiſhed by good qualities and ſo forth. But JÍMÚTAVÁHANA

TAVÁHANA and the reſt affirm, that, on failure of the wife, daughter, and daughter's ſon, the father, mother, and brothers, in order, take every ſort of property.

In the text of YÁJNYAWALCYA, the term being exhibited in the plural number, it is thereby ſuggeſted, that brothers variouſly diſtinguiſhed have a right of inheritance. Although their relation might be conſidered as ſingle, in as much as it is the affinity of a brother, it is nevertheleſs diſtinguiſhed into many ſorts, to intimate their ſucceſſive titles. That order of ſucceſſion is ſubjoined: in the firſt place, a re-united brother by the ſame mother ſhall take the eſtate of one who leaves no male iſſue; on failure of ſuch, the uterine brother not re-united, and the re-united one by a different mother, have equal claims; in default of them, the half-brother, who is not re-united. So RAGHUNANDANA and JÍMÚTAVÁHANA. The proofs are ſubjoined.

JÍMÚTAVÁHANA *expreſsly* ſays, in collateral ſucceſſion, the uterine brother has the firſt claim; as declared by the text, "an uterine brother ſhall tranſmit and receive the heritage to and from his uterine brother, *as he happens to live or die.*"

## CCCCXXVI.

YÁJNYAWALCYA:—Two brothers, who, after their forisfamiliation, have both re-united themſelves to the family of their father, ſhall reciprocally tranſmit and receive their eſtates, as they happen to live or die; and ſo ſhall two uterine brothers *.

Conſequently, YÁJNYAWALCYA, having propounded in general terms the ſucceſſion of brothers, whether by different mothers or by the ſame, whether re-united or not (CCCXCVIII), ſubjoins this text, for the ſake of exhibiting a diſtinction, by virtue of which, if a ſingle brother have both claims, as related by the whole blood and as re-united, he bars all the reſt. The ſhare of one re-united brother who deceaſes, another re-united one ſhall receive

* This verſion of the text is tranſcribed from a manuſcript of Sir WILLIAM JONES. It is variouſly explained in the ſubſequent commentary. T.

receive and ſo forth; but a whole brother, not one by the ſame father only, ſhall alone receive the ſhare of a re-united brother by the ſame mother. A ſimilar opinion is delivered in the *Dípacalicá*.

## CCCCXXVII.

CÁTYÁYANA:—On failure of nearer claimants, re-united brothers muſt be conſidered as heirs of thoſe who are re-united, and diſunited brothers of thoſe who are diſunited; *for* they reciprocally ſhare *the eſtates* if they have no progeny.

Brothers who are not re-united, take not the ſhares of thoſe who die after re-union; but diſunited brothers muſt be conſidered as heirs of thoſe who die diſunited: "on failure of nearer claimants," that is, in default of a wife and the reſt. The laſt terms of the text are joined in the appoſition called *dwandwa*. So CHANDÉSWARA. Theſe terms are added to ſhow the reaſon *of the precept*; the meaning therefore is, 'becauſe they are competent to take each other's ſhares when they have no iſſue:' this alſo ſome lawyers affirm. By expreſſing, in general terms, that re-united brothers are heirs of their coparceners, it is intimated, that a re-united brother of the whole blood ſucceeds, to the excluſion of one who remains ſeparate. VÁCHESPATI MISRA alſo obſerves, that uterine brothers, who are not re-united, do not take the heritage. Conſequently, if there be whole brothers, one of whom is, and the other is not, a coparcener, the re-united brother by the ſame mother has the ſole right of ſucceſſion, by conſent of many authors.

But if two re-united brothers, one by the ſame, the other by a different mother, claim the ſucceſſion, what is the rule in that caſe? To this CHANDÉSWARA replies, the meaning of the text (CCCCXXVI) is this: on the competition of brothers of the whole and half blood, the whole brother ſhall alone take the eſtate. Accordingly,

## CCCCXXVIII.

*Vrĭhat* MENU :—If a brother by the ſame mother be living, one by a different mother ſhall not take the eſtate; the law is the ſame, even though it be immoveable property; but, on failure of the whole brother, one of the half-blood may indeed poſſeſ the eſtate.

This is reaſonable; for, it is ſaid by JÍMÚTAVÁHANA, if one have two claims, as brother by the ſame mother and as re-united, he bars all other claimants; therefore the re-united brother of the whole blood is ſole heir to the eſtate of the deceaſed: but, on failure of him, the diſunited brother by the ſame, and re-united one by a different mother, have equal claims; becauſe one is brother of the whole blood, though diſunited; the other re-united, though brother of the half blood: and CHANDÉSWARA remarks, 'thus it is ſhown that relation by the whole blood is a ground on which even a diſunited brother may take the inheritance;' ſince there are arguments on which both may claim the ſucceſſion, it is therefore declared that both ſhall inherit: and MISRA obſerves, 'a brother by a different mother, having re-united himſelf to the family, ſhall take the eſtate of his half-brother; but not unleſs he re-unite himſelf:' an uterine one, however, may take the inheritance, even though he do not re-unite himſelf to the family (interpreting the text by connecting remote terms). The following precept is explicit:

## CCCCXXIX.

YÁJNYAWALCYA :—A brother by a different mother, if he return after partition to the family, not any other half-brother, ſhall inherit the eſtate; but a whole brother, even without returning, ſhall ſucceed *to it*, not a *diſunited* half-brother by the ſame father only, *except on failure of the reſt.*

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The term employed in this text ſignifies brother by a different mother; having returned to the family, he may take the eſtate *of a coparcener*, but not that of a half-brother, who is not re-united: it is thus ſhown, that he can only inherit the eſtate when he had returned to the family. "A whole brother*;" one who ſprings from the ſame father and mother; in ſhort, a uterine brother. "Not re-united" is repeated in the laſt part of the text. Conſequently a whole brother, though not re-united, ſhall take the eſtate; hence it follows, that he ſhall ſucceed to his whole brother, who had not returned to the family. Since an order of ſucceſſion is not mentioned, theſe two ſhall ſucceed together; and a partition ſhall therefore take place between them. On failure of uterine brothers, the legiſlator adds, "not a half-brother by the ſame father only;" that is, one who is not re-united ſhall not take the eſtate. Hence, if there be half-brothers, one of whom is and the other is not re-united, the diſunited half-brother is not heir. The equal claim of a re-united half-brother with a re-united whole brother had been already denied, the equal claim of a diſunited half-brother with a re-united half-brother is now denied; there is conſequently no vain repetition. Such is the interpretation approved by CHANDÉSWARA. MISRA ſays, the laſt terms of the text are a mere repetition.

On the reading of the ſecond meaſure *nányóderyó d'hanam harét*, the conſtruction is, 'a half-brother, who is not re-united, ſhall not inherit the eſtate.' JÍMÚTAVAHANA thus expounds the text: a half-brother, being re-united, ſhall take the eſtate, not a diſunited one; whole brother is repeated from the preceding text (CCCCXXVI); 'but a whole brother, even though not re-united, ſhall ſucceed, not ſolely the re-united half-brother.'

But others thus comment on both texts of YÁJNYAWALCYA (CCCCXXVI and CCCCXXIX): if there be whole brothers, ſome of whom are and others are not re-united, the legiſlator ſays, "a re-united brother ſhall take the heritage of a re-united one;" if the whole brothers remain ſeparate, he ſays, "an uterine brother ſhall take the heritage of an uterine one." In that caſe, if there be a re-united half-brother, what ſhall be the conſequence?

* *Sanſriſhta*; its more obvious ſenſe, in which the term is often uſed, is "re-united:" the text might be tranſlated, without deviating from that ſenſe, in ſome one of the modes ſubſequently propoſed. T.

ſequence? The legiſlator replies, "a brother by a different mother, if he return after partition to the family, ſhall take the eſtate." Since both have claims to the ſucceſſion, they ſhall inherit equally; but a half-brother, who had not re-united himſelf, ſhall not ſucceed: this the lawgiver declares, "not any other half-brother." If a uterine and a half-brother have returned to the family, what ſhall be done in that caſe? To remove the doubt whether both ſhall inherit under the vague expreſſion of the text, "a re-united brother ſhall inherit the eſtate of a re-united one" (CCCCXXVI), the legiſlator ſays, "the re-united half-brother by the ſame father only ſhall not take the inheritance" (CCCCXXIX).

Some lawyers affirm, that re-union of parceners is not a ground of ſucceſſion; for, were it ſo, it might be ſuppoſed that a ſon who is owner of ſeparate wealth, and a brother's ſon, would not jointly inherit the property poſſeſſed by a paternal uncle re-united with his nephew. On the contrary, inheritance poſitively reſts on other claims. Thus, ſucceſſion in right of fraternity being eſtabliſhed, *the* re-union *of one* bars any other brother. In like manner, if there be a whole brother not re-united, ſince he alone has a claim in right of affinity by the whole blood, he alone ſhall inherit; not a half-brother, even though re-united. Thus the text above cited (CCCCXXVI) relates to uterine brothers only; and the legiſlator denies the claim of a half-brother in the ſubſequent text (CCCCXXIX); "a brother by a different mother, whether re-united or not, ſhall not inherit the eſtate of his half-brother" *(reading the text* nányóderyadhanam harét): but on failure of uterine brothers, the legiſlator adds, "a re-united *half*-brother, not *any other* half-brother by the ſame father only, ſhall inherit the eſtate."

That is wrong, ſince it contradicts all *reſpected* authors, and is inconſiſtent with the reaſon of the law; for, why ſhould not re-union be a cauſe of a brother's ſucceſſion, as well as relation by the whole blood? If it be ſaid, ſince a ſon, a wife, and the reſt, confer benefits on the proprietor in another world, there is no parity between that claim and one founded on re-union; but a uterine brother confers benefits, by offering the double ſet of oblations for the mother; *the anſwer is,* a re-united brother alſo defrays religious ceremonies by means of *his* property *thrown* into parcenary. On failure of either a diſunited whole brother, or of a re-united

 half-

half-brother, the other is heir: in the one cafe, if there be half-brothers, one of whom is and the other is not re-united, the re-united brother has the fole right *to the inheritance*, not the difunited one; for the text of YÁJNYAWALCYA expreffes, "a re-united brother fhall receive the eftate of a re-united one" (CCCCXXVI). On failure of both thefe *prior claimants*, a difunited brother by a different mother fhall inherit, becaufe he alfo is brother by the fame father. Since a mother alfo claims the funeral cake and other oblations, which are given by an uterine brother in the *śráddha* performed with a double fet of oblations (CCCCXCVI), the whole brother is fuperior to one by a different mother, becaufe he offers the double fet of oblations for the mother of the late proprietor: fince two brothers, living in the fame houfe, afford reciprocal fupport, preferve each other's property, confer mutual benefits by the acquifition of wealth, and refpectively earn religious merit at the expence of wealth acquired by each other, they are nearer the one to the other than a difunited brother.

Who is called a re-united parcener? He is thus defined by VRĬHASPATI:

## CCCCXXX.

VRĬHASPATI:—He is faid to be "re-united," who, having made a partition, lives again, through affection, with joint property in the fame houfe with his father, his brother, or his paternal uncle.

After brothers have made a partition by mutual confent, when any one of them lives *again* with a certain other brother, thefe two are *faid to be* re-united. Their dwelling together is not fimply a refidence in the fame houfe or abode, (for that may happen even without affection, when the habitations are not equally numerous with the brothers;) but it confifts in forming one houfehold: and their intentions are thus declared, "what is thy property is mine;" their effects are thus intermixed: "the duties of us both fhall be the fame;" an agreement for community of duties is thus made: in like manner, *one is made for* common fare: and this is deduced from the infertion of the terms "through affection;" elfe this word would be fuperfluous, fince they could

not

not dwell one moment together without affection: but now such particular regard is suggested by that term.

"In the same house;" in the same household. Consequently two brothers, again living together, through mutual affection, as joint-housekeepers, after having made a partition, are called re-united parceners. Such is the meaning; and the text is so interpreted by RAGHUNANDANA, JÍMÚTAVÁHANA, VÁCHESPATI MISRA, and the rest.

When the owners of several property live together as joint-housekeepers, making a common stock of their fortunes, they are said to be re-united; for this is *an* easy *interpretation*: not making a common stock of their fortunes after partition; for this would be *a* burdensome *condition*. Some become owners of several property by partition; others are naturally so. Thus union, founded on affection, may take place between two persons sprung from different families, natives even of different countries. This some lawyers affirm. It is wrong; for such united persons are no-where seen; and the terms of the text, "having made a partition," would be unmeaning; and it is improper to consider any term as nearly superfluous, which may become pertinent: accordingly a burdensome condition cannot be imputed as a fault. Re-union consists in dwelling together as joint-housekeepers, after making a joint stock subsequent to partition. It should not be argued, that partners in trade, living together after a distribution of wealth gained by commerce, would be called re-united. Partition signifies distribution of heritage. Such being the case, may not the sons of two sisters be re-united; for they may happen to live together in the same household, after a partition of the property left by the maternal grandfather and the rest? Heritage here signifies wealth inherited in the direct male line: such is the meaning, as appears from the terms of the text, "with his father, his brother, or his paternal uncle." They alone are determinately meant, who were not separate by their birth. Of these, the father is first mentioned, as the distributer of the estate, when it is divided in his life-time: the term, taken comprehensively, includes also the paternal grandfather and great-grandfather; the brother is next mentioned, as the distributer of shares among brothers; and lastly, the paternal uncle is named, as the person who distributes an estate shared with a son's son, whose own father is



dead:

dead: the term, taken comprehensively, includes the son and grandson of a paternal uncle, and the great-uncle and others; the wife of a brother and the rest are not meant, because they are subject to the controul of their husbands and so forth. Among those only does re-union take place; not among others: but the practice of returning to coparcenary after partition with the son of a paternal uncle does exist, as remarked by CHANDÉSWARA. It should be here noticed, that if two brothers die after dividing the estate, the re-union of their sons or grandsons is not consistent with the obvious sense *of the law*; because he who made a partition does not *in this case* return to a common dwelling. Such is the opinion of MISRA and CHANDÉSWARA.

JÍMÚTAVÁHANA likewise holds, that they only who may be coparceners by birth (in respect of property acquired by a father, brother, paternal uncle and the rest), having made a partition, are re-united by dwelling together in the same house as joint-housekeepers, after annulling the former partition, through mutual affection, by a declaration in this form, "thy wealth is mine, and that which is mine is thine." There is no re-union of any other persons, such as partners in trade, by the simple junction of property.

Here the son or other *male* descendants of a paternal uncle are comprehended in the term "and the rest," as appears to have been understood by SRÍ CRĬSHNA TERCÁLANCÁRA; for he has remarked, on the words "by birth," that the mother is thereby excluded, because her claim to property arises from marriage: else the commentator would have said, 'the mother is excluded, because she is not *found* among the persons enumerated, namely, the father, brother, and uncle.'

But RAGHUNANDANA affirms, that re-union only takes place between father and son, between brothers, or between paternal uncle and nephew. In effect he considers the term "and the rest," in the remark of JÍMÚTAVÁHANA, as comprehending only the son and nephew. JÍMÚTAVÁHANA again observes, when treating of the shares of re-united parceners, "re-union should not be admitted among others besides those who are expressly mentioned, else the enumeration would be unmeaning." The author of the *Pracása*, after citing the text, adds, this is a positive precept. *However*, the opinion of CHANDÉSWARA and

and the reſt is conſiſtent with the reaſon of the law; for there is no difference whatſoever, whether the paternal uncle or his ſon be the diſtributer. But the opinion of RAGHUNANDANA, and of the author of the *Pracáśa*, follows the letter of the text. This ſhould be examined, and one opinion only ſhould be eſtabliſhed.

Among four brothers, if two be ſeparated, and two remain undivided, but the effects be diſtributed by arithmetical computation or the like; for example, ten *ſuvernas* out of twenty have been allotted to two brothers, and five a-piece to the other two, or if land or the like have been ſimilarly diſtributed, in that caſe, ſhould one of the two undivided brothers die, leaving no ſon or other near heir, by whom ſhall the effects, aſſignable for his ſhare, be taken? Not by the uterine brother, in ſo much re-united; for he is not ſo *in the ſtrict ſenſe of the term*, ſince re-union conſiſts in living together after partition, with an agreement in this form, "what is thy property is mine; and what is my property is thine:" but in this caſe partition had not taken place between thoſe two coheirs. Nor ſhall all the ſurviving brothers by the ſame mother take *the lapſed ſhare;* for that would contradict common ſenſe: it is difficult to find a reaſon why a re-united parcener ſhall alone inherit when brothers live together after partition, and all the brothers ſucceed when ſome of them live together without ever making a partition: in adminiſtrative juſtice the letter of the law muſt not be ſolely followed. If it be ſaid, partition by common conſent of all the brothers is authorized by *expreſs* ordinances; but the law has not indicated partition among ſome of the coheirs, and coparcenary of others, and no ſpecial rule of deciſion has been delivered on this point; no ſuch partition ought therefore to be made: *the anſwer is*, if certain *Śúdras*, or the like, not having ſeen the codes of law, make ſuch a partition, a rule of deciſion becomes neceſſary. Nor is that diſtribution void; for it has been made by the free conſent of all the coheirs, and no ſpecial law forbids it.

To this lawyers reply, the expreſſion "having made partition," does not intend a diviſion reciprocally granted, but any diſtribution, whether accepted or made by both the parceners, between whom re-union takes place. Conſequently, two brothers have in this caſe a ſingle allotment, the others have *ſeparate* ſhares:

 partition

partition therefore takes effect even in regard to thoſe two; and they afterwards live together as joint-houſekeepers. It ſhould not be objected, that the word "again" becomes irrelevant, becauſe they do not twice live together. Since the literal ſenſe of that term is burdenſome, and there is no occaſion to diſtinguiſh the ſhares, when re-union takes place, the word muſt be taken in a ſecondary ſenſe. But other lawyers affirm, that an undivided heir, as well as a re-united one, excludes a divided heir: in the ſilence of the law, this muſt be eſtabliſhed by reaſoning.

In fact, a diſtribution is in ſuch a caſe made among all the co-heirs, by an act of the mind; accordingly the portion of an eldeſt ſon, the beſt houſe and the like, are allotted: in its conſequences there is no difference. This brief expoſition may ſuffice.

Under the text above cited (CCCCXXVI), ſhall not one re-united brother take the veſted ſhare of another, even though he leave a ſon, a wife, or other near heir? No; for VRĬHASPATI denies it (CCCCVII). "Or ſeclude himſelf from the world" (CCCCVII 2): the particle has a connective ſenſe, alluding to degradation and the like. "It devolves on his uterine brother:" conſequently, if brothers by the ſame and by different mothers had re-united themſelves with the deceaſed, the uterine brother has the ſole right of ſucceſſion; but a re-united one by a different mother, and an uterine brother *not re-united*, have an equal claim: both theſe inferences are here juſtified. "To her who is his ſiſter a ſhare muſt be given" (CCCCVII 3) to defray her nuptials, as already explained. "Such is the law concerning him who leaves no iſſue" (CCCCVII 3), neither a ſon, a ſon's ſon, nor the ſon of ſuch a grandſon, nor a daughter, nor the ſon of a daughter: "nor leaves a wife, nor father, nor mother;" that is, no wife endowed with good qualities, as above mentioned; the word mother is underſtood, having been regularly dropped by the rules of etymology. It follows, that a difference ariſes from the re-union of parceners in collateral ſucceſſion only; but the claim of re-united brothers is not ſtronger than that of a wife and the reſt.

The texts of MENU (CCCCVI), bearing the ſame import with thoſe of VRĬHASPATI above cited, muſt relate to a re-united brother, who leaves no ſon, nor wife, nor other near heir. CULLÚCABHATTA concurs in this opinion. "His uterine brothers"

thers" (CCCCVI 3): by repeating *the word* re-united, this re-lates to the uterine brothers who have returned to coparcenary; and the term is alſo taken in a general ſenſe: conſequently, if brothers by the ſame and by different mothers had re-united themſelves with the deceaſed, the uterine brother is ſole heir; but if he have not returned to coparcenary, he has an equal title with the re-united brother by a different mother. This ſenſe is deduced *from the text*.

"Such brothers as were re-united," that is, half-brothers; for uterine kindred had been already mentioned: by the word "re-united," ſuch brothers, not having returned to the family, are excluded. "And ſiſters:" this relates to the allotment of a ſufficient ſum to defray their nuptials. As for the remark of CULLÚCABHATTA, that uterine brothers and ſiſters ſhall aſſemble and divide equally the veſted ſhare of their uterine brother, it muſt be affirmed that his meaning is the ſame: he cannot intend that their rights ſhall be equal; for it is no where ſeen that ſiſters inherit the property of their brothers, and the text is well explained as relating to the allotment of a ſufficient ſum to defray their nuptials. As for another obſervation of CULLÚCABHATTA, that, among brothers by the ſame and by different mothers, they alone who uſe the ſame furniture and utenſils, having made a common ſtock of their ſeveral effects, ſhall divide his ſhare, not all the brothers by the ſame or by different mothers: here alſo his meaning muſt be underſtood to be the ſame; re-united brothers by a different mother inherit only on failure of a re-united one by the ſame mother.

"Uterine ſiſters," not given in marriage: they afterwards belong to the family of their huſbands. So the *Pracáśa*, cited in the *Retnácara*.

## CCCCXXXI.

YAMA:—Immoveable undivided property ſhall be the heritage of all the brothers, *be their mothers the ſame or different*; but immoveable property, when divided, ſhall on no account be inherited by the ſons of the ſame father only.



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The meaning therefore is, 'all brothers, whether ſons of the ſame father and mother, or of the ſame father only.'

JÍMÚTAVÁHANA.

If any immoveable property of divided heirs, common to brothers by different mothers, have remained undivided, being held in coparcenary, the half-brothers ſhall have equal ſhares with the reſt; but the uterine brother has the ſole right to divided property moveable or immoveable. The text of *Vrĭha.* MENU likewiſe intimates the ſame, by alluding to a diſtinction in reſpect of immoveable property, when the ſubject propoſed was already aſcertained by the former part of the text (CCCCXXVIII). This maxim, ſay lawyers, ſhould be likewiſe adduced in the caſe where no re-union has taken place.

Even a ſon given, provided he be virtuous, is *conſidered as* allied by the whole blood, if he were accepted by the mother of the ſon born in lawful wedlock; but, if not adopted by her, he is *conſidered as* a half-brother; for, in the caſe of a ſon given and the reſt, adoption is acknowledged to be equivalent to procreation.

On the death of one who has received the inheritance of his brother, his own ſon or other heir claims the ſucceſſion, not the ſon of any other brother; for he has no lien on the property of his uncle, the eſtate having already devolved on a collateral relation. Such is the ſucceſſion of brothers.

VI. On failure of them, the ſon of a brother is heir, by the texts of YÁJNYAWALCYA and VISHNU (CCCXCVIII, CCCCXVII;) and becauſe he offers two funeral cakes to anceſtors of the late proprietor, one to his father, the other to his paternal grandfather. A brother's ſon has not an equal claim with a brother; for VISHNU ſays, "if he be dead, it goes to the brother's ſon;" "and he" muſt relate to the neareſt term "brother:" and YÁJNYAWALCYA intimates, that, in default of brothers, their ſons inherit, by ſaying, "on failure of the firſt of theſe, the next in order ſhares the eſtate:" and a brother, who is the giver of ſix funeral cakes, or of three *(if he be ſon of the ſame father only)*, which it was incumbent on the late proprietor to offer, is ſuperior to the brother's ſon, who is giver of two funeral cakes, which the late proprietor was bound to preſent to his father and paternal grandfather. JÍMÚTAVÁHANA concurs herein.

in. As for the aſſertion, that the ſon of a living brother does not inherit, merely becauſe he confers no benefits, ſince he does not offer the funeral cakes, that is futile; for it might be thus ſuppoſed, that the ſon of another deceaſed brother would inherit *in preference to his uncle;* and you muſt admit, that, on failure of other brothers, the ſon of a living but degraded brother does inherit: aſſuming the natural claim of a nephew, whoſe father is alive, like that of a daughter's ſon, whoſe parent is living, he might have a right of ſucceſſion. Neither can it be affirmed, that the paternal uncle ought to have an equal claim with the brother's ſon, becauſe he offers funeral cakes to the paternal grandfather and great-grandfather of the late proprietor. The brother's ſon has a ſuperior claim, becauſe he preſents an oblation to the *late proprietor's* father, who is the perſon chiefly conſidered. Thus JÍMÚTAVÁHANA. The father is indeed pre-eminent; becauſe a man has no right to perform a *ś'ráddha* for his paternal grandfather or other anceſtor, unleſs he have a right to perform one for his ſire; and the father is neareſt of kin *to the late proprietor*.

Here again a diſtinction muſt be admitted: the ſon of an uterine brother has the firſt claim, becauſe he confers benefits on the mother of the late proprietor; for it appears from a text cited by JÍMÚTAVÁHANA, RAGHUNANDANA and the reſt (CCCCXXXII), that the father's natural mother alſo ſhares with her huſband the funeral cake offered by a ſon's ſon; but thoſe benefits cannot be conferred by the ſons of half-brothers: *however,* on failure of other nephews, the ſon of a half-brother may inherit.

## CCCCXXXII.

The mother ſhares with her huſband obſequies ſolemnly performed *by his ſon;* the paternal grandmother, with her huſband; and the mother of the paternal grandfather, with her's.

If any one nephew be re-united, ſhall he alone take the whole, or ſhall he ſhare it with all the ſons of brothers? It ſhould not be argued, that a brother's ſon, being re-united, has the ſole right

of succession, by the general maxim above cited (CCCCXXVI). That text being propounded in the course of treating upon the Succession of Brothers, must be taken specially, as relating solely to that subject. Such being the case, it was vain to mention the re-union of a nephew with his paternal uncle: this should not be affirmed. They are all mentioned to authorize that re-union, because they thereby become similar to undivided coheirs by having common duties and common income and expence. MENU and VRĬHASPATI have only ordained the *preferable* claim of a re-united brother; and no legislator has expressly declared the title of a re-united uncle or nephew. As for the text of NÁREDA (CCCCXXXIII), that also, from its coincidence with the precept of VRĬHASPATI, must be considered as relating to the same subject.

## CCCCXXXIII.

NÁREDA:—The *vested* share of re-united brothers is declared to belong exclusively to them: in any other case than this, they shall not *exclusively* share the inheritance of the deceased; it shall go to other brothers, when no issue is left.

That which is the vested share of re-united brothers belongs exclusively to them; in any other case, that is, if the deceased were not re-united, they who were shall not share the inheritance; that is, they shall not take the entire allotment of the deceased. Then, who shall receive that share? The legislator replies, "it shall go to others," that is, to other brothers. Or the sense may be, 'in any other case, that is, on failure of re-united brothers, it shall go to others not *naturally* entitled to partake of the share;' that is, to other brothers: share here signifies the property or inheritance; the natural partakers of it are obviously the sons; it goes to others, that is, to brothers. Or the sense may be, 'when half-brothers are re-united, such re-united brothers by different mothers may inherit from each other; in any other case, that is, if they be not re-united, half-brothers do not share the inheritance, but it shall go to others, namely to the full brothers.' CHANDESWARA says, the meaning is this: in any other case, that

that is, on failure of re-united brothers, it ſhall go to others, not *firſt* entitled to ſhare the inheritance, or who do not claim the ſucceſſion in right of re-union. But the author of the *Pracáśa* thus expounds the text: "than this" alludes to ſomething underſtood, namely to the caſe of one who leaves no male iſſue: in any other inſtance, that is, if he do leave male iſſue, the re-united brothers ſhall not ſhare the inheritance; but when they die childleſs, it ſhall go to others, namely to brothers and the reſt. The mention of re-union is ſolely intended for the ſucceſſion of brothers; hence it is not ſpecially conſidered in the caſe of a brother's ſon: if this be affirmed, it may be anſwered, the author of the *Dípacalicá* does not concur in that opinion; for, in expounding the text of YÁJNYAWALCYA (CCCCXXVI), he ſubjoins the term "or other parcener" after the word "brother," and delivers this gloſs: the ſhare of a brother or other parcener dying after re-union, another re-united brother or coheir ſhall take. Conſequently, the maxim muſt be eſtabliſhed on the ſenſe conveyed by the phraſe "a re-united parcener ſhall receive the veſted ſhare of a re-united one" (CCCCXXVI): and that ſenſe may be thus expreſſed; the re-united coheir alone ſhall take the eſtate, if there be others related in the ſame degree, but not re-united: it exhibits an exception to the general rule of inheritance deduced from another text. Thus, if a father, having made a partition among his ſons in his life-time, and becoming re-united with any one of them, die after the lapſe of a few days; in that caſe, the re-united ſon, and no other, ſhall inherit his property. Accordingly MISRA affirms, that, in the caſe of re-union between parent and child, the re-united ſon alone, not the diſunited one, obtains the ſhare of his father, although another ſeparated ſon be living; for it is declared, without reſervation, that a re-united parcener receives the inheritance from a re-united one: and the re-union of father and ſon has been alſo propounded by a text above cited (CCCXXX). What is thus affirmed by him, is alone juſt; for the claim of other ſons on the property of their father was annulled by partition, and the right of the re-united ſon was revived by re-union.

It muſt be here inquired, how the remark, that their property is annulled by partition, can be appoſite? for, while the father lived, the ſon had no right to his wealth before the diſtribution of it,

it, and the text of YÁJNYAWALCYA (XCII) merely implies, that partition of an eſtate inherited from the paternal grandfather may be made at the will of the ſon: even admitting the literal ſenſe of that text, ſons could never have a claim on the wealth acquired by the father himſelf.

In ſaying 'the right of ſons was annulled by partition,' the meaning is this: the ſon naturally had a claim on the property of his father by birth alone, under the rule of GÓTAMA (Ch. I. Sect. I. Art. I.); but, not being then independent while the father was living, ſince the text of CÁTYÁYANA expreſſes "a ſon becomes independent after the death of both his parents" (Book II, Chap. IV, v. XV 5), he had no title to *claim* partition or the like; but after the death of his father he has ſuch a right: this is declared by DÉVALA in theſe terms, "they have not ownerſhip while a faultleſs father lives" (V), that is, they have not independent dominion, although they have a proprietary right. It is not ſaid in the law, YÁJNYADATTA has not ownerſhip of the property of DÉVADATTA: nor is a ſon deſtitute of right to the paternal eſtate, while his mother ſurvives; conſequently, ſuch a title only is annulled by partition. If it be ſaid, this is the meaning intimated by VÁCHESPATI MISRA, the anſwer is, that opinion is not confirmed by JÍMÚTAVÁHANA and the reſt: were it even admitted by them, it would not be here affirmed; for, if a father, having made a partition with his ſons, die after re-uniting himſelf with any other parcener whomſoever, *it would follow, that* his property could not be inherited by the divided ſons: but no other perſons ought to take the ſucceſſion while ſons live, ſince none can like them have a preſent right to his property.

The commentator obſerves, 'it ſhould not be affirmed that it is not ſo, becauſe the text contains an exception, "this law concerns him who leaves no iſſue" (CCCCVII); for that relates to a ſon born after partition.' To this again it may objected, that the word "this," occurring in the text of the legiſlator, muſt, if poſſible, be referred to the law propounded by him, *that is,* to the claim of a re-united brother by the ſame mother on the property of a re-united one, and to the ſucceſſion of a diſunited brother by the ſame mother, on failure of ſuch re-united brothers, propounded in the text immediately preceding it; not to a diſ-

tinction

tinction founded on re-union, for VRĬHASPATI has not, like YÁJNYAWALCYA (CCCCXXVI), noticed *such a distinction*. It is improper to reject, without sufficient cause, the law promulged by the legislator himself, and assume one propounded by another author as intended by the word "this:" and there is no proof, that the expression "his share shall devolve on his uterine brother," should be explained as signifying generally the right of any one re-united parcener to inherit the property of another. In like manner, there is no argument to prove that the terms "who leaves no male issue" relate to a son born after partition. Hence this text (CCCCXXVI) is intended to propound a distinction founded on re-union, when there is a competition of heirs related in the same degree: the re-united parcener alone shall therefore take the heritage, if there be whole brothers, or half brothers, or paternal uncles, or others as near of kin to the deceased; for no distinction is found in that phrase; and the preceding text related to all *re-united parceners*, and a question may arise on *the claims of* all. Hence, it should not be admitted that this text relates to brothers only. So JÍMÚTAVÁHANA and RAGHUNANDANA. The words "and the rest" being inserted in the expression "paternal uncles and the rest," many lawyers thus state the opinion of JÍMÚTAVÁHANA: a son might be here comprehended under the terms "and the rest;" but that is not elegant; for, since he has precedence above all other heirs, he onght to be first mentioned: or the son of a paternal uncle and the rest might be comprehended, but that is not the opinion of RAGHUNANDANA. Yet in fact both ought to be included, conformably with *the sentiments of* MISRA and CHANDÉSWARA. On the death of him who, having made a partition, re-united himself with his paternal uncle in preference to his own brother, would not the brother and paternal uncle have equal claims? If it be said they are not related in the same degree, *the answer is*, the same might be supposed of brothers by one or more mothers. To the question proposed the answer is, they have not equal claims; *for* the title of brothers in right of fraternity is alone propounded by the text (CCCCXXVIII).

We resume the subject. The right of a nephew or other parcener who has returned to the family being thus proved, the re-united son of an uterine brother has the first claim: on failure

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of him, ſuch a ſon of a half-brother, and the diſunited ſon of a whole brother, have equal claims: on failure of either of them, the other is heir: if there be neither one nor the other of theſe claimants, the diſunited ſon of a half-brother is heir. In reſpect of immoveable undivided property, no author has ſaid, that nephews of the whole and half blood have equal claims, by parity of reaſoning, as in the caſe of brothers; and the text of the legiſlator is not explicit on this point.

Has the ſon of a re-united brother a ſpecial title or not? There is no law on this ſubject; nor is the ſon of a re-united parcener acknowledged to be ſo himſelf, for there is no proof of it. If he be not conſidered as a re-united coheir, the right of deduction in favour of the eldeſt might be ſuppoſed when he makes a partition with his paternal uncle; for the text (CCCCVII) only denies the right of the firſt-born, when partition is made among re-united parceners. Nor ſhould this be deemed admiſſible; for it is inconſiſtent with the reaſon of the law. Admitting that he is not a re-united coheir, ſtill he is an undivided one; and, as ſuch, he ought therefore, by parity of reaſoning, to take the heritage like a re-united parcener, although ſeparated coheirs be living. When this is demonſtrated, then the ſon of a re-united parcener, ſo long as partition be not made, ſhall take the heritage, although ſeparated coheirs be living, who are equally near of kin to the deceaſed. Accordingly, if two of four brothers have not made a partition, the property of one undivided brother ſhall devolve on the other: in like manner, if a man have made a partition with his children, and a ſon born afterwards die leaving male iſſue, ſuch a grandſon alone ſhall inherit the property of his paternal grandfather; not the ſon with whom partition had been already made, nor his male deſcendant. Some authors thus expound the law.

But, in fact, ſince it is only declared that a re-united parcener ſhall alone take the inheritance, the undivided coheir ſhall not ſucceed *in preference to others:* in the caſe of four brothers, above ſtated, it is admitted that two *remaining in coparcenary* ſhall be conſidered as re-united after partition; for ſhares muſt be allotted to all, that the portions may be made equal, as required by the law before cited (XXXIX 1). The ſon born after partition is ſole heir of the whole property left by the father, under a text

above

above quoted (C); but no law is found by which his ſon ſhall become ſole heir. What ſhare ſhall he receive? If he may take the allotment which was due to his father, under a text formerly cited (LXXIX), the remainder of the paternal eſtate was the due allotment of his father; and he ſhall therefore obtain it. *To the queſtion thus propoſed the anſwer is,* he ſhall take ſo much as would have been the ſhare of his father, *ſuppoſing him* not *to have been* tranſcendently virtuous. It ſhould not be objected, that the ſons of thoſe with whom partition was formerly made, would not only take the ſhares formerly allotted, but alſo receive part of the wealth reſerved by the paternal grandfather, whilſt the ſon of a ſon born after partition would only receive a ſhare of the wealth ſo reſerved by his grandſire, which would be an unjuſt diſparity. It muſt unavoidably be admitted: without expreſs authority of law, no inference can be eſtabliſhed from *apparent* diſparity. Other authors contend, that the law ſhould be ſo expounded *. Such is the ſucceſſion of a brother's ſon.

VII. On failure of him, the ſon of a nephew ſhall inherit, by the text of YÁJNYAWALCYA (CCCXCVIII); for kinſmen related by the funeral cake are determinately intended by the terms kindred ſprung from the ſame original ſtock; and the ſucceſſion of the neareſt *ſapinda* is ordained by the text of MENU.

## CCCCXXXIV.

MENU:—To the neareſt *ſapinda, male or female,* after him in the third degree the inheritance next belongs; then, on failure of *ſapindas,* and of their iſſue, the *ſamánódaca,* or diſtant kinſman †, ſhall be the heir; or the ſpiritual preceptor, or the pupil, *or the fellow ſtudent, of the deceaſed.*

Whether proximity by birth, or by the relation of the funeral cake, be *preferred,* the paternal uncle is in both views nearer *of kin*

* The firſt ſeems the better opinion. T.

† *Saculya.*

*kin* than the grandſon of a brother; for he is ſon of the father of the *late* proprietor's father, and offers two funeral cakes, which he was bound to preſent; and ſurely the paternal grandfather is nearer of kin, for he is father of the late proprietor's father, *would have* ſhared the funeral cake offered by him, and gives an oblation, which he was bound to preſent to the paternal great-grandfather. On this point JÍMÚTAVÁHANA remarks, the grandſon of a brother bars the paternal uncle, becauſe he offers a funeral cake to the deceaſed proprietor's father, who is chiefly conſidered; but the great-grandſon of a brother, though a deſcendant of the proprietor's father, is barred by the paternal uncle, becauſe he is fifth in deſcent, and is *therefore* excluded from the oblation of a funeral cake.

Would not the brother of the paternal grandfather be in like manner heir, although a great-grandſon of the ſame anceſtor be living; and would he not have an equal claim with the grandſon of the paternal grandfather? To this we reply, "neareſt" here ſignifies proximate both by birth and by the funeral cake; conſequently, he who is neareſt of kin to the late proprietor by birth and by the funeral cake, and who is moſt immediately connected both by deſcent and by oblations, ſhall take the property. It ſhould not be objected, whence is this deduced; and why is not proximity to the deceaſed proprietor ſolely propounded? Nearneſs of kin is not the ſole cauſe of ſucceſſion, but connexion by the funeral cake does alſo co-operate; and hence it appears that the benefits conferred are the grounds of the claim: now, the benefits conferred by the neareſt of kin are more important than thoſe afforded by one who is more diſtantly related; remote kindred ought therefore to inherit only on failure of nearer kinſmen. Thus, ſince the ſon of a daughter confers benefits by the oblation of a funeral cake, and ſince it is recorded in the *Mahábhárata* that even his birth alone is beneficial to his maternal grandfather (CV), therefore the ſon of a daughter, conferring benefits on her father, is mentioned by JÍMÚTAVÁHANA as heir, on failure of the great-grandſon in the male line. The order of *ſucceſſion by* nearneſs of kin is proximate to the proprietor himſelf. Hence a perſon who confers benefits on the laſt poſſeſſor himſelf is firſt heir; after him, the father of the late proprietor, being moſt near; if he be dead, the perſons who confer benefits on the father

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in the order of proximity to him; on failure of these, the paternal grandfather and the rest comparatively near; on failure of the ancestor, he who confers benefits on him. Accordingly the brother is sole heir, although a nephew capable of performing obsequies be living; for the brother is nearest to the father. It should not be objected, that the son, as well as the father, is most near to the late proprietor; and the great-grandson of that son, conferring benefits on him, might therefore claim the inheritance. He does not afford those benefits which the late proprietor was bound to confer on his ancestors.

Such being the case, is not the separate specification of the brother's son superfluous, since he is also suggested by the mention of kinsmen sprung from the same original stock? Nor should it be answered, that he is separately mentioned for the sake of exhibiting a distinction, because there are various sorts of brothers and nephews. Were it so, the paternal uncle ought likewise to be separately mentioned, because that is equally true of him. To the question thus proposed the answer is, No; for the brother is heir, on failure of the father and the nephew, in default of brothers; thus succession follows the order of proximity, that is, the course of benefits conferred on the nearest of kin: it does not follow such an order of proximity, by which the paternal grandfather would be *first* heir on failure of the father; nor has the paternal uncle an equal claim with a brother's son: he is therefore separately mentioned, for the sake of showing the order of succession in right of proximity by birth and the like, and for the purpose of denying a concurrent title of three descendants of the father, like that of three descendants of the proprietor himself, namely, his son, and his grandson, and great-grandson, *whose father and paternal grandfather are deceased.* Consequently, on failure of nearer claimants, including the daughter's son, the father is heir; in default of him, the mother; after her, the brothers; if they be dead, a brother's son; next, a brother's grandson in the male line; and after him, the son of the father's daughter: such is the path indicated by JÍMÚTAVÁHANA. But SRÍ CRÍSHNA TERCÁLANCÁRA, author of a commentary on his treatise, contends, on the reason of the law, that the son of a son's daughter, and the son of a grandson's daughter, also claim the inheritance, because they confer benefits

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on their maternal great-grandfather, and on the father of a maternal great-grandmother. How can a daughter's ſon and the reſt be conſidered as kinſmen ſprung from the ſame original ſtock? Becauſe the term is uſed in the ſenſe of race or lineage *any-how deſcending* therefrom; and the ſon of a daughter mediately ſprings from that ſtock. It ſhould not be objected, that, were it ſo, a ſiſter and the reſt might claim the inheritance, becauſe they confer benefits by means of their ſon or other deſcendant. Their claim is obviated by a text above cited (CCCCXIII), and by BAUDHÁYANA, declaring women to be in general incapable of inheritance: this does not contradict the right of wives and the reſt, which is propounded by ſpecial texts. So JÍMÚTAVÁHANA.

In the ſucceſſion of brother's ſons, a diſtinction between the whole and half blood muſt be underſtood, not in the caſe of daughter's ſons. *But* ſome lawyers conſider it as the opinion of JÍMÚTAVÁHANA, that, in the ſucceſſion of the ſons of the father's daughters and ſo forth, a diſtinction is taken between uterine and half ſiſters. Herein SRÍ CRĬSHNA TERCÁLANCÁRA does not acquieſce, becauſe no law is found *expreſsly* declaring the participation of a maternal grandmother in the funeral cake offered to the maternal grandfather. Thus, on failure of the father's iſſue including daughters, the paternal grandfather is heir to the property, becauſe he is neareſt to the deceaſed; on failure of him, the paternal grandmother; ſuch being the order of ſucceſſion deduced from the text of MENU (CCCCXXIV), and from her participation in the funeral cake offered by her ſon's ſon (CCCCXXXII): and the reaſoning holds good, that as a mother ſucceeds on failure of the father, ſo ſhall the paternal grandmother ſucceed in default of the paternal grandfather. On failure of them, their iſſue, including the ſon of a daughter, ſhall inherit; and in the ſucceſſion of the paternal grandfather's ſon, grandſon, and great-grandſon, the ſame diſtinction muſt be admitted as before, in reſpect of their relation to the *late proprietor's* father by the whole or half blood, becauſe the paternal grandmother ſhares the funeral cakes offered by her deſcendants, and the wife of a paternal grandfather does not ſhare the oblations preſented by the deſcendants of another wife of her huſband: but no diſtinction is taken in the caſe of daughter's ſons, becauſe the

the maternal grandmother does not ſhare the funeral cake offered by her daughter's ſon.

Next, on failure of iſſue of the paternal grandfather, including his daughter's ſon, the paternal great-grandfather is heir; in default of him, the paternal great-grandmother, becauſe ſhe ſhares the funeral cake offered by her great-grandſon. This obſervation of JÍMÚTAVÁHANA and RAGHUNANDANA ſhould be reſpected. It muſt not be argued, that, in the want of an expreſs law, her ſucceſſion is forbidden by the general maxim above cited (CCCCXIII). A man ſhould not affirm, of his own authority, that no ſuch ſpecial ordinance exiſts; for the ocean of the law has not been traverſed. On failure of her, the deſcendants of the paternal great-grandfather, including his daughter's ſon as before, ſucceſſively claim the inheritance. Here again a diſtinction muſt be admitted in the ſucceſſion of the paternal great-grandfather's ſon, ſon's ſon, and grandſon's ſon, according to their relation to the paternal grandfather by the whole or half blood; but not in the inſtance of his daughter's ſon. Such is the ſucceſſion of kinſmen ſprung from the ſame original ſtock.

VIII. On failure of them, a more diſtant kinſman is heir, by the text of YÁJNYAWALCYA (CCCXCVIII). In default of iſſue of the paternal great-grandfather, including his daughter's ſon, the maternal grandfather and the reſt, who would have ſhared the funeral cakes which the deceaſed would have been bound to offer; and they who preſent funeral cakes to ſuch anceſtors inherit in the order of proximity, namely, the maternal grandfather, the maternal uncle, his ſon, and ſon's ſon; the maternal great-grandfather, his ſon, ſon's ſon, and grandſon's ſon; the father of the maternal great-grandmother, his ſon, ſon's ſon, and grandſon's ſon: on failure of the firſt reſpectively, the next in order is heir. Again; their daughter's ſons have a title as givers of funeral cakes to the maternal grandfather, to his father, and to the father of this maternal great-grandfather; conſequently, on failure of iſſue of the maternal grandfather, including his daughter's ſon, the deſcendants of the maternal great-grandfather, alſo including his daughter's ſon, ſucceſſively take the inheritance. In this ſenſe does YÁJNYAWALCYA uſe the term kindred. Such is the rule approved

approved by SRÍ CRĬSHNA TERCÁLANCÁRA, who follows the opinion of JÍMÚTAVÁHANA.

On failure of the giver of a funeral cake to be ſhared by the deceaſed, *and in default* of a ſon of the father's daughter, who gives three funeral cakes which the deceaſed was bound to offer to his own father and the reſt, and ſo forth, the maternal uncle and others, who preſent oblations which the deceaſed was bound to offer to his maternal grandfather and the reſt, claim the inheritance in the order of proximity. JÍMÚTAVÁHANA.

It ſhould be here remarked, that the ſon of a ſon's and of a grandſon's daughter, and the ſon of a brother's and of a nephew's daughter, and ſo forth, claim ſucceſſion, in the order of proximity, before the maternal grandfather; for they alſo confer benefits by the oblation of funeral cakes. It muſt not be objected, that, were it ſo, the ſon of a grand-daughter would have a prior title, even though the father be living, in as much as he gives a funeral cake to *the deceaſed* himſelf. The oblations preſented to the maternal grandfather and the reſt are ſecondary, becauſe they muſt follow funeral cakes offered to paternal anceſtors; the ſon of a grand-daughter can have no claim, while the giver or ſharer of a principal oblation exiſts. Nor ſhould it be objected as a conſequence, that the ſon of the late proprietor's daughter, or of his father's daughter, and ſo forth, could have no title, if any kinſman within the degree of a *ſapinda* were living. The *Mahábhárata* ſhowing that a daughter's ſon procures advantage even by his birth alone (CV), it appears that he does confer important benefits. SRÍ CRĬSHNA TERCÁLANCÁRA concedes to this opinion. Such is the ſucceſſion of maternal kindred.

IX. On failure of them, a diſtant kinſman allied by family (*ſaculya*) is heir by the text of MENU (CCCCXXXIV). "A kinſman of the ſame family" is the father of the paternal great-grandfather and his iſſue, and ſo forth, and is called *ſamánódaca*: ſuch kinſmen claim the inheritance in the order exhibited. So JÍMÚTAVÁHANA.

They who are partakers of the rice and clarified butter wiped off the hand, with which the funeral cakes have been offered, are *ſaculyas*: ſuch is the meaning. JÍMÚTAVÁHANA expounds the text of BAUDHÁYANA (CCCXCVII), three perſons aſcending from

from the father of the paternal great-grandfather, and three descending from the son of the great grandson, do not participate in the same funeral cake, and are therefore pronounced kinsmen allied by family, and sharing divided oblations.

It should be noticed, that among the *sapindas* rendered impure by reason of a dead kinsman, three are also considered as such in respect of inheritance, and three as *saculyas*.

## CCCCXXXV.

The fourth person and the rest share the remains of the oblation wiped off *with* cus'a *grass*; the father and the rest share the funeral cakes; the seventh person is the giver of oblations; the relation of *sapindas*, or men connected by the funeral cake, extends *therefore* to the seventh person, *or sixth degree of ascent or descent*.

In the first place, the son of the great-grandson is heir, because he offers the remains of the funeral cake to the proprietor, to his father, and to his grandfather; next the grandson of the great-grandson, and after him the great-grandson of the great-grandson in the male line; on failure of these, the paternal grandfather's paternal grandfather, because he *would have* shared the remains of the funeral cake wiped off by the proprietor for the sake of ancestors; if he be dead, his son and other descendant to the third degree have successive claims: on failure of these, the daughter's son of the paternal grandfather's paternal grandfather, and other givers of a funeral cake in the triple set of oblations, inherit in order; in default of them, the son, grandson, and great-grandson of the great-grandson of the grandfather's grandfather in the male line, have successive claims as givers of the remains of funeral cakes to the paternal grandfather's paternal grandfather: on failure of them, the paternal great-grandfather's paternal grandfather is heir; if he be dead, his son, grandson, or great-grandson in the male line, his daughter's son, the son of the great-grandson in the male line, and the son of that great-grandson's son, *and the son of this last-mentioned descendant*, have

succeſſive claims as before; on failure of them, the paternal great-grandfather's paternal great-grandfather, his ſon, grandſon, and great-grandſon, his daughter's ſon, the ſon, grandſon, and great-grandſon of his great-grandſon, ſimilarly inherit in order: on failure of all theſe, the *ſamānōdacas*, or perſons connected by an equal oblation of water, have a right to the inheritance. Now the relation of *ſamānōdacas* extends to the fourteenth perſon, by the following text:

## CCCCXXXVI.

But the relation of *ſamánódacas*, or thoſe connected by an equal oblation of water, ceaſes with the fourteenth perſon.

## CCCCXXXVII.

Vrĭhaspati:—On failure of them, uterine brothers, or brother's ſons, paternal and maternal kinſmen, pupils, or learned prieſts, are entitled to the wealth of the deceaſed:

2. If a man die leaving no iſſue, nor wife, nor brother, nor father, nor mother, let all kinſmen, related by the funeral cake *in equal degree*, divide his inheritance in due proportions.
3. But half the collected wealth ſhould be firſt ſet apart for the benefit of the deceaſed, and carefully appropriated to his monthly, ſix-monthly, or yearly obſequies.
4. Where many claim the inheritance of a childleſs man, either paternal or maternal, or more diſtant kinſmen, he who is the neareſt of them ſhall take the eſtate.

Let half the eſtate be ſet apart to defray the obſequies of the deceaſed. Such is the ſenſe.

Among

Among these, the eighth anceſtor, and his ſon, grandſon, great grandſon, daughter's ſon, and the reſt, as far as the fourteenth in deſcent counted from the eighth anceſtor, ſucceſſively claim the inheritance: the ſame muſt be underſtood in reſpect of the ninth anceſtor and the reſt; for nearneſs of kin and ſuperior benefits are entitled to reſpect in every caſe. Men connected by equal oblations of water are allied by family; and on failure of ſuch kinſmen *as partake of the remains of funeral cakes*, thoſe who are connected by equal oblations of water are heirs, as ſuggeſted by the term "kinſmen allied by family;" for it is ſo remarked by JIMÚTAVÁHANA. Such is the ſucceſſion of kinſmen.

X. On failure of them, the ſpiritual preceptor is heir; if he be dead, the pupil; by the text of MENU (CCCCXXXIV).

JÍMÚTAVÁHANA.

In default of an order *of ſucceſſion* ſuggeſted by the ſenſe or terms *of the text*, the order ſuggeſted by the *literal* reading is reſpected: ſuch is his notion. The word kinſman or connexion, as employed by YÁJNYAWALCYA (CCCXCVIII), muſt include the ſpiritual preceptor: there is conſequently no deficiency in the text of YÁJNYAWALCYA. But others contend, ſince the ſpiritual preceptor ſtands in the place of a father, and the pupil in that of a ſon, therefore the ſpiritual preceptor inherits only on failure of the pupil. That is futile; for a ſimilar reading occurs in the texts of BAUDHÁYANA and others, and YÁJNYAWALCYA declares, that a fellow ſtudent in theology takes the ſucceſſion on failure of the pupil (CCCXCVIII).

## CCCCXXXVIII.

BAUDHÁYANA:—On failure of kinſmen connected by the funeral cake, kinſmen allied by family ſhall inherit; in default of them, the ſpiritual preceptor, the pupil, or the prieſt hired to perform ſacrifices, ſhall take the inheritance; and laſtly, on failure of them, the king.

The term ſpiritual preceptor (*áchárya*) ſignifies him who inveſts the pupil with the ſign of his claſs, as expreſſed in the text.

 CCCCXXXIX.

## CCCCXXXIX.

He who girds the pupil with the ſacrificial cord, and inſtructs him in the *Véda*, is called an *áchárya*.

Srí Crĭshna Tercálancára concurs in this expoſition. A fellow ſtudent in theology is he who ſtudies the *Véda* under the ſame preceptor. In default of him, deſcendants from the ſame ancient Sage claim the ſucceſſion; on failure of them, men ſprung from the ſame branch of a venerable ſtock, by the text of Gótama (CCCCXL). So Jímútaváhana.

## CCCCXL.

Gótama:—Let thoſe kinſmen take the inheritance who give the funeral cake, *who offer the remnant and water only*, who are deſcended from the ſame holy Sage, or, *laſtly*, who ſpring from the ſame company of *Rĭſhis*.

But ſome hold, that the ſpiritual teacher and the reſt could only inherit on failure of deſcendants from the ſame branch of a venerable ſtock or company of *Rĭſhis*, in conformity with the order *of ſucceſſion* ſtated in the text of Gótama; and there is no difficulty in comprehending kinſmen deſcended from the ſame holy Sage, or from the ſame company of *Rĭſhis*, in the texts of Yájnyawalcya, Vrĭhaspati, and Baudháyana, under the terms "diſtant kinſmen," and "allied by family:" as the phraſe, "kinſman allied by family," which is uſed by Menu (CCCCXXXIV), is acknowledged by Jímútaváhana to include the *ſamánódacas* or kinſmen connected by equal oblations of water, ſo may the term be ſimilarly extended in the preſent inſtance alſo, agreeably to the coincidence of the text of Gótama. That opinion is queſtionable.

Others contend, that the ſtipendiary prieſt is heir immediately after the pupil, in preference to ſuch diſtant kinſmen, by the text of Baudháyana (CCCCXXXVIII); and he ought to

have

have the first title, because he was more immediately connected *with the deceased*, than the fellow-student in theology.

But MISRA says, the succession may be thus briefly stated: the son *is first heir*; on failure of him, the son's son; in his default, the great-grandson by males: if no such issue be left, the virtuous wife; on failure of her, the daughter; after her, the mother; if she be dead, the father; for want of him, the brother; in default of him, his son; on failure of the nephew, the *sapinda* nearest of kin to the deceased; after him, the more distant *sapindas* in order; if there be none such, the nearest *saculya*, or kinsman allied by family; next, the more distant *saculyas* in order; if there be none, the daughter's son; in default of him, the mother's family and the rest; on failure of all *other* heirs, the king, excepting the property of a *Bráhmana*; but in the case of wealth left by a priest, another honest *Bráhmana* is alone entitled to take the inheritance.

On failure of persons descended from the same primitive stock, a kinsman *in general* is heir; and by that term is meant a relation of the deceased himself, of his father, or of his mother.

## CCCCXLI.

The sons of his own father's sister, and those of his own maternal uncle, must be considered as his own kinsmen.

In like manner there are kinsmen of the father and of the mother, such as their father's sister's sons, mother's sister's children, and maternal uncle's issue; these take the succession in order, as MISRA also observes. Consequently these are comprehended in his recapitulation, by the terms, "on failure of him, the mother's family and the rest."

Here authors deduce from the form of succession delivered by JÍMÚTAVÁHANA, that, on failure of kinsmen allied by the funeral cake, or by family *name*, the son of the father's maternal uncle, or of the father's sister, or of the mother's maternal uncle, or of the mother's sister, are likewise heirs. That is not accurate; for, since these are inferior to the father's maternal grandfather, and

and mother's maternal grandfather and others, it is improper, without the authority of exprefs law, to affirm the title of the father's maternal uncle's fon and the reft; and the word (*bandhu*) being taken in its accepted fenfe, obvioufly fignifies the kinfmen of the proprietor himfelf, and their title is in effect thereby eftablifhed: this we hold reafonable.

On failure of heirs, including kinfmen fprung from the fame branch of a venerable ftock, the fucceffion devolves on *Bráhmanas* by the text of MENU.

## CCCCXLII.

MENU:—On failure of all thofe, the legal heirs are fuch *Bráhmanas* as have read the three *Védas*, as are pure *in body and mind*, as have fubdued their paffions; *and they muft confequently offer the cake:* thus the rites of obfequies cannot fail.

"Have read the three *Védas*;" have ftudied all the *Védas*.

"Thus the rites of obfequies cannot fail," that is, rites which would be loft by *the eftate* being enjoyed *without performing obfequies for the deceafed*, being completed in confequence of the transfer of *that* duty to another by the defcent of the property to a *Bráhmana*, do not fail. JÍMÚTAVÁHANA.

Thus the rites, namely the obfequies of the deceafed proprietor, cannot fail. CULLÚCABHATTA.

Others explain the text, on failure of heirs, including kinfmen fprung from the fame branch of a venerable ftock, fince the wealth of the deceafed goes to *Bráhmanas*, the king, purfuing proper conduct, does not violate juftice.

Since it muft *at all events* be faid "on failure of thefe," therefore *the word* all, *as here* ufed by MENU, muft be intended to intimate the right of *all* heirs before mentioned, including men fprung from the fame branch of a venerable ftock or company of *Ríshis* and the reft. Such is the opinion of CULLÚCABHATTA.

The want of heirs defcended from the fame holy Sage, or from the fame company of *Ríshis*, and the failure of *Bráhmanas*, muft be

be underſtood *to be the non-exiſtence of any ſuch perſon* in the ſame town, elſe the eſcheat to the king could never take place.

JÍMÚTAVÁHANA.

The falling *of eſtates* to the ſovereign is mentioned in a contiguous ſentence. MENU declares, that, on failure of virtuous *Bráhmanas* reſiding in the ſame town, the inheritance of a *Cſhatriya* and the reſt ſhall eſcheat to the king.

## CCCCXLIII.

MENU :—The property of a *Bráhmana* ſhall never be taken *as an eſcheat* by the king; this is a fixed law: but the wealth of the other claſſes, on failure of all *heirs*, the king may take.

" On failure of all heirs," including honeſt *Bráhmanas*. " The other claſſes ;" other than the ſacerdotal tribe ; namely, the military claſs and the reſt. But the wealth of a *Bráhmana* muſt never be taken by the king: conſequently, on failure of honeſt *Bráhmanas*, he muſt give the property of a prieſt to *Bráhmanas* in general. Such is the notion of CULLÚCABHATTA. The wealth of other claſſes, in default of heirs including kinſmen ſprung from the ſame branch of a venerable ſtock, the king ſhould give to honeſt *Bráhmanas;* on failure of them, he may take it himſelf as an eſcheat. Such is the opinion of JÍMÚTAVÁHANA.

But MISRA and the reſt hold, that the firſt text of MENU (CCCCXLII) relates to *the property of Bráhmanas*, but the wealth of *Cſhatriyas* and the reſt ſhall be taken by the king alone. Such being the rule of deciſion, why may he not likewiſe take the eſtate of a prieſt ? To obviate this doubt, the legiſlator firſt ordains, that the property of a *Bráhmana* ſhall not be ſeized by the ſovereign. Accordingly, BAUDHÁYANA declares the taking of holy property reprehenſible in a king.

## CCCCXLIV.

BAUDHÁYANA :—Holy property, unduly appropriated,

ated, kills a ſon and a ſon's ſon; for it deſtroys like the moſt exalted poiſon: therefore the king ſhall on no account take the property of a *Bráhmana.*

"Deſtroys a ſon and a ſon's ſon;" kills them alſo. The property of a *Brăhmana* is indeed the moſt deadly poiſon *to the ſacrilegious ſpoiler.* The *Retnácara.*

Muſt it not be affirmed, that this text ſhows it highly reprehenſible to take wealth from a *Brăhmana* by force, fraud, or the like, *but not ſo to take it without violence as an eſcheat?* No; for the text of DÉVALA is explicit.

## CCCCXLV.

DÉVALA:—In every caſe the king may take the wealth of a ſubject dying without an heir, except the eſtate of a prieſt; for the property of a *Bráhmana* dying without an heir muſt be given to learned prieſts.

"Heir;" taker of inheritance: the term is regularly derived in a dative ſenſe.

## CCCCXLVI.

VRĬHASPATI:—The king takes *as an eſcheat* the wealth of thoſe *Cſhatriyas, Vais'yas* and *'Súdras,* who leave no ſon, nor wife, nor brother; for he is lord of all.

In this text, by declaring that he may take the wealth of *Cſhatriyas* and the reſt, it is intimated that the property of a *Bráhmana* ſhall not be taken.

CCCCXLVII.

CCCCXLVII.

Sanc'ha and Lic'hita :—The property of a learned priest descends to *Bráhmanas*, not to the king ; wealth consecrated to the gods, or allotted to priests, must not be seized by the sovereign, nor a deposit open or sealed, nor wealth regularly inherited, nor the property of infants or women : thus the *Véda* expresses,

"The inherited property of a woman must not be seized by the king, nor *acquired* effects of an infant, nor the wealth of a woman received in the six modes of acquisition, nor the patrimony of infants."

The term which occurs in this text *(parishad)* signifies a *Bráhmana*. The *Vivâda Retnácara* and *Vivâda Chintámeni*.

"Deposits" and the rest, are terms employed indefinitely : hence the property consecrated to the gods, or allotted to priests, must on no account be taken by the king, unless as a fine or the like. A sealed deposit is a distinct sort of bailment, deposited under seal. "Wealth regularly inherited" alludes to patrimony; it is property which has descended *to the possessor* from another. So the *Madana Párijáta* and *Retnácara*.

The seizure of a *Bráhmana's* property being forbidden in these texts, on whom shall the estate of a *Bráhmana* devolve ? This question arising, and the words of Dévala (CCCCXLV) bearing the same import, the text of Menu (CCCCXLII) must relate to the sacerdotal class only. Consequently, on failure of heirs, including kinsmen sprung from the same branch of a venerable stock or company of *Rishis*, the estate of a *Bráhmana* descends to learned priests, and the property of any other person escheats to the king ; the wealth of the military and other classes does not go to learned priests. Such is the result. Accordingly, the text of Náreda also exhibits the right of the king to the escheat, on failure of daughters and the rest, not in default of heirs including priests.

## CCCCXLVIII.

NÁREDA:—On failure of daughters *the heirs* are, kinſmen allied by family, more diſtant kindred, and men who claim the ſame origin *with the deceaſed;* on failure of all *theſe*, the property eſcheats to the king,

2. Excepting the wealth of a *Bráhmana;* but a king, attentive to his duty, ſhall allot a maintenance to the wives of the deceaſed: this is declared to be the rule of inheritance.

Kinſmen allied by family are ſons of paternal uncles and the reſt. Men who claim the ſame origin are perſons belonging to the ſame tribe. But all this ſuppoſes the widow to be deficient in good qualities. The *Retnâcara.*

By "perſons belonging to the ſame tribe," it is not meant that any *Cſhatriya* is heir of a *Cſhatriya*, and any *Vaiśya* of a *Vaiśya;* for that would be an unprecedented conſtruction: but it muſt be underſtood, from the coincidence of the text of GÓTAMA (CCCCXL), that 'ſimilar origin' intends ſimilarity of deſcent from a holy Sage or from a company of *Riſhis*. MISRA and the reſt thus expound the law.

"This ſuppoſes the widow to be deficient in good qualities;" that is, the wife left by a *Cſhatriya* or other man of inferior claſs: but in the caſe of a *Brâhmana's* widow deficient in good qualities, the meaning is, let the king, levying it on the heirs, give her a maintenance. VISHNU alſo propounds the right of the king to the eſcheat, on failure of deſcendants from the ſame company of *Riſhis* with the deceaſed; for his expreſſion "on failure of a fellow ſtudent" (CCCCXVII) muſt be taken in a comprehenſive ſenſe, from the coincidence of other texts.

It ſhould not be argued, becauſe the ordinances of MENU prevail over all other codes, therefore muſt the texts of other Sages be reconciled with that which is propounded in his inſtitutes: and, for the ſake of coincidence with his precept (CCCCXLII), the right of the king mentioned in other texts takes effect only

 on

on failure of honeſt *Brâhmanas*. There is no difficulty in explaining the text of MENU (CCCCXLII) in this ſenſe. VRĬHASPATI pronounces that to be of no authority which contradicts the ſenſe of his ordinances; and it is conſiſtent with juſt reaſoning to infer, that, as that expoſition of a law which is moſt conformable with reaſon prevails, when two interpretations of it are *found* in competition, ſo the expoſition of a law of MENU, which coincides with the text of another ancient Sage, ſhall prevail when two interpretations of it are propoſed. Conſequently, the term "all" in the ſecond text of MENU (CCCCXLIII), and the word "heir" employed by CULLÚCABHATTA in expounding that term 'on failure of the heirs above mentioned,' ſignify all heirs, including perſons ſprung from the ſame company of *Riſhis*, but not including *Brâhmanas unallied to* the deceaſed. Authors thus expound the law. Of theſe two opinions one only ſhould be followed.

If other *Brâhmanas* refuſe to take the inheritance, or if there be no *Brâhmanas*, it muſt in this caſe be thrown into the water, in like manner as has been ordained by NÁREDÀ (Book I, v. CCXXXI).

The effects of an infant, and thoſe belonging to a woman, muſt not be retained by the king, even though they have fallen into his poſſeſſion (CCCCXLVII): SANC'HA and LIC'HITA themſelves cite the authority of a precept, "thus it is expreſſed," that is, the *Véda* declares: this muſt be ſupplied. "The property of a woman;" effects belonging to her; the inheritance of her huſband, *which has devolved on her*, and ſo forth. "The effects of an infant;" property any-how acquired by a minor, having been given to him by any perſon whomſoever. Some lawyers ſay, the laſt part of the text explains the property of a woman and effects of an infant; and this relates to the king's own wife, ſiſter, and the reſt; but of other women, even the inheritance or the like muſt not be taken by him: this will ſubſequently become manifeſt. "The ſix modes of acquiſition;" received before the nuptial fire and ſo forth.

## CCCCXLIX.

Menu :—The king ſhould guard the property which deſcends to an infant by inheritance, until he return from the houſe of his preceptor, or until he have paſſed his minority.

Wealth which deſcends to an infant by inheritance, and becomes the property of the minor, let the king guard ; that is, let him protect it from the *other* heirs. The *Retnácara*.

Conſequently the meaning is, let him act in ſuch a manner that other heirs may not take the whole, defrauding the infant, who is incapable from non-age of conducting his own affairs ; or the ſenſe may be, let him commit the ſhare of the minor in truſt to any one coheir or other guardian. " Until he return from " the houſe of his preceptor ;" this alludes to the three *firſt* claſſes, for perſons of thoſe tribes are not qualified to conduct their own affairs before they return home. " Or until he have paſt his minority ;" this alludes to the ſervile claſs : a young man has paſt minority when his age is not leſs than ſixteen years, *(that is, when he has completed his fifteenth year.)*

## CCCCL.

Vishnu :—The king ſhould guard the property of an infant, and the effects of the huſband and wife *in the abſence of the huſband.*

## CCCCLI.

Sanc'ha and Lic'hita :—Let the king protect the effects of infants who are incapable from non-age of conducting their own affairs, and the goods belonging to widows of learned prieſts and of valiant

liant ſoldiers; but effects of which there are no owners eſcheat to the king.

The king muſt guard the property which devolves on the wives of learned prieſts and of valiant ſoldiers, by the abſence or departure of the prieſt and the ſoldier. Such is the expoſition delivered by CHANDÉSWARA.

## CCCCLII.

BAUDHÁYANA, treating of the ſucceſſion of ſons:— Their ſhares, if they be incapable from non-age of conducting their own affairs, let the king keep carefully guarded, together with the accumulation on thoſe ſhares, until the minors arrive at *years of* diſcretion.

"With the accumulation;" with the increaſe. "Carefully guarded;" well protected. "Until;" in the ſenſe of reſtriction: before they attain their ſeventeenth year. The *Retnácara*.

Conſequently, if the proprietor be dead, and his ſons chooſe to make a partition of his eſtate, the king being informed by the minor, or by another kinſman, or by his own officer, muſt himſelf, or through ſome perſon appointed by him, keep the ſhare of the minor until he attain the age of ſixteen years: in ſome inſtances it ſhould be laid out for increaſe. In like manner, the expences and other matters ſhould be ſuperintended by the king himſelf, or by a perſon appointed by him. Theſe and other points may be argued from the reaſon of the law. Again, if the minor have no brother, the whole eſtate ſhould be nevertheleſs guarded in a ſimilar manner; for the reaſon of the law is the ſame. Thus the property of a woman, and the goods of a minor, falling into the king's power, ſhould not be taken by him as owner: this has been already noticed. But it ſhould be here remarked, that the property of a minor ſhould be entruſted to heirs and the reſt *appointed* with his concurrence; or, if the infant be abſolutely incapable of diſcretion, with the conſent of a near and unimpeachable

unimpeachable friend, ſuch as his mother and the reſt. CÁTYÁYANA declares, that kinſmen muſt guard the property of an infant.

## CCCCLIII.

CÁTYÁYANA:—Let all the coheirs guard the ſhare which belongs to an abſent parcener;

2. But if a man die, leaving an infant ſon, his wealth muſt be preſerved entire by his kinſmen; and they may divide it in due proportions, after the minor has paſſed adoleſcence.

If one who has an infant ſon die, his property muſt be preſerved by the kinſmen or brethren of the minor; it muſt not be immediately diſtributed: but they may divide the eſtate after he has paſſed adoleſcence. Such is the meaning of the phraſe. Conſequently, the ſhare of a minor muſt be preſerved during his adoleſcence by kinſmen, like the allotment for an abſent parcener; for the reaſon of the law is the ſame: but before his adoleſcence partition is not proper. In like manner, the king, or the kinſmen appointed by him, ſhould guard the minor's property received from his brothers as his ſhare of the inheritance. Here kinſmen ſignify relations in the male line, or, on failure of them, a ſiſter's or daughter's ſon, or other near kinſman *of the father*. In practice, a mother is guardian of a minor, and of his property: and that is proper, if ſhe be capable *of protecting the ward;* but being a woman, ſhe is under the control of her huſband's mother and the reſt: ſtill the effects of the widow and of the grandſon muſt be guarded; and ſince the mother-in-law is a woman, ſhe requires the aid of another kinſman; and he ſhould be ſelected with the concurrence of the paternal grandmother, and be approved by the king; for the paternal grandmother beſt knows who among the kinſmen is ſkilled in the conduct of affairs, and the king is an univerſal ſuperintendant: and if the widow be old and capable of governing her own conduct, there is no harm in permitting the eſtate to be guarded by a kinſman ſelected by her; for it is only directed that a widow and the reſt ſhall guard the property

property by any *possible* means. A contest arising between the mother-in-law and the widow, if the king, residing at a great distance, cannot accurately distinguish their good and bad characters, then indeed any person may be appointed by the king's own selection. This method, established by lawyers on their own judgment, is consistent with the reason of the law.

## CCCCLIV.

VRĬHASPATI:—A brother, a brother's son, a *sapinda*, or a pupil, performing rites with a funeral cake *for the deceased*, shall thence obtain increase *of prosperity*.

Consequently, he who takes the estate of the deceased shall perform his obsequies; but if one be heir to the estate, and another be qualified to perform the obsequies, he must give a sufficient sum, and cause the rites to be celebrated by him who is qualified to perform them.

## CCCCLV.

SMRĬTI:—He who takes the estate shall perform the obsequies.

The word *śrádd'ha* here signifies the obsequies performed exclusively for a person recently deceased.

The *Pracáśa* and *Retnácara*.

But others contend, on the text of VRĬHASPATI above cited (CCCCXXXVII 3), that he who takes the estate of the deceased must also perform the annual *śrádd'ha;* and such is the practice with some persons. That is wrong; for there is no difficulty in considering the word " annual " as relating to the first anniversary obsequies. Another text does relate to that subject: " He who takes the estate, and fails in performing the *last* duties for the deceased, *is criminal*, &c."

How can the ſpiritual preceptor, who takes the eſtate of a *Cſhatriya*, perform his funeral rites, ſince that is forbidden?

## CCCCLVI.

The prieſt who performs funeral rites for perſons of an inferior tribe, is degraded to that claſs in the preſent world and in the next.

No; for this text relates to brothers unequal in claſs: and the difficulty is obviated by ſaying, the ſpiritual preceptor may accompliſh the funeral rites by the intervention of a qualified perſon equal in claſs with the deceaſed.

## CCCCLVII.

VISHNU:—He who is heir to the eſtate is the giver of funeral cakes.

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## SECT. II.—*On the Inheritance of Anchorites and Devotees.*

The ſubject of ſucceſſion to the property of a houſeholder being concluded, YÁJNYAWALCYA propounds ſucceſſion to property which belonged to a man who had entered into an order of devotion.

## CCCCLVIII.

YÁJNYAWALCYA:—The heirs of a hermit, of an anchorite*, and of a ſtudent in theology, are, in *inverſe* order, the ſpiritual teacher, the virtuous pupil,

* I follow Sir WILLIAM JONES in applying the name of hermit to the *Vánapraſt'ha*, and anchorite to the *Yati* or *Sannyáſi*. See tranſlation of MENU, Chap. VI. T.

pupil, and the brother by religious duties being pupil of the ſame preceptor.

" Being pupil of the ſame preceptor;" having the ſame ſpiritual teacher. He is brother by religious duties, and pupil of the ſame ſpiritual father: the appoſition is in the form called *carmadhāraya.* " In order;" that is, in the inverſe order: hence the ſpiritual preceptor ſhall take the property of the perpetual ſtudent in theology; the virtuous pupil, verſed in the ſtudy of revelation concerning the ſupreme ſoul, and in preſerving that ſacred ſcience, *ſhall take* the eſtate of an anchorite; and the brother by religious duties, being pupil of the ſame ſpiritual father, takes the wealth of a hermit. " The brother by religious duties" is one familiarly known as brother of the deceaſed; the ſubſequent term *(ēcatìrt'hí)* may ſignify, belonging to the ſame order of devotion.

If it be alleged, that this contradicts the text of VASISHT'HA (CCCXXXVIII); it may be nevertheleſs reconciled, by ſuppoſing effects any-how poſſeſſed. CHANDÉSWARA.

VACHESPATI MISRA concurs in the ſame expoſition. Another author has ſtated much, which was obvious, concerning the ſuppoſition of effects any-how poſſeſſed; for example, the hoard of a hermit for the performance of annual rites, and the truſs of an anchorite or the like.

But JÍMÚTAVÁHANA conſiders the laſt term of the text *(ēcatìrt'hí)* as diſtinct from the reſt. Conſequently, the ſpiritual brother ſhall take the property of a hermit; the virtuous pupil, the effects of an anchorite; and the ſpiritual preceptor, the wealth of a ſtudent in theology: on failure of them, one who belongs to the ſame order is heir. The perpetual ſtudent in theology is he who, having abandoned his father and the reſt, reſides for life in the family of his preceptor, remaining ſtrictly obedient to him. But the property of a temporary ſtudent in theology ſhall be taken by his own father and the reſt. Such a ſtudent in theology, according to the learned, is he who remains near his father and the reſt *of his kindred.*

 CCCCLIX.

## CCCCLIX.

VISHNU:—The spiritual preceptor shall take the property of a deceased hermit.

It should not be argued, from the coincidence of this rule of VISHNU, that the direct order is meant in the preceding text, and that the inverse order need not be supposed; were it so, the consequence would be incongruous, since the spiritual brother would be heir of perpetual students in theology, although their spiritual father were living. Nor should it be argued, that here, as in the case of succession to the estate of him who leaves no son, the order may be such that the person last mentioned is heir on failure of the preceding. The anchorite can have no spiritual father. It must be therefore understood, that the spiritual father is first heir to the wealth of a hermit; on failure of him, the spiritual brother; as in the succession to the estate of a *worldly* man who leaves no male issue. According to JÍMÚTAVÁHANA, the insertion of both terms, spiritual brother, and pupil of the same tutor, or devotee of the same class, is useless; for both senses are conveyed by the single term spiritual brother.

Again; terms are correlative in order then only when they correspond in number; as in the example, "The charms of the lyre, of the wreath of jasmine, of the blue lily, are surpassed by her delightful voice, her smiles, and her enchanting glance:" but here the number is unequal. This objection is answered *by saying*, that, although correlative order be only acknowledged in the instance of terms equal in number, the sense shows that the last, not a preceding term, must be rejected as not included in the correlative order. The sense exhibited by construction is subordinate to the implied purport; as in the example, "CHAITRA is armed with a sword and wears ear-rings, and MAITRA does so likewise;" the wearing of ear-rings is alone suggested by the term "so," because the implied purport points thereto: and thus in other instances.

As for the remark, that as the word pupil, in the instance of the anchorite, signifies him who duly learnt the forms enjoined to that order, so the term spiritual preceptor may signify him who

who taught those forms: and the spiritual father is therefore first heir of hermits and the rest; after him, the pupil; after him again, the spiritual brother; and, lastly, one belonging to the same order: and such may be the successive right of inheritance. That argument is erroneous; for it is inconsistent with approved usage.

## SECT. III.—*On a Second Partition, after Re-union of Parceners.*

In treating of succession to the property of him who has no son, it has been said, a re-united parcener is heir of a re-united one:" now, if two coheirs who have renewed coparcenary, make a second partition, how is it regulated? On this point MENU and VISHNU propound a text above cited: "if brethren, once divided, and living again together as parceners, make a second partition, the shares must in that case be equal; and the first-born shall have no right of deduction" (CCCCVI 1).

Here "equal shares" suppose the re-union of brothers belonging to the same tribe: but if a *Bráhmana* and a *Cshatriya* become re-united, their allotments must be understood to follow the proportions before mentioned; for this text is merely intended to deny the right of deduction which had been ordained in favour of the first-born. JÍMÚTAVÁHANA.

From the concurrent import of the text of VRĬHASPATI (CCCCVII 1), does it not appear that a second deduction in right of seniority is denied when a second partition is made*, not the original right to a larger portion which had already gained validity? No; for, whether they be father and son, brothers, uncle and nephew, or the like, they possibly may be undivided in respect of wealth acquired by the father, paternal grandfather, or the like: accordingly the first-born cannot have separate property in the *identical* portion formerly received on account of seniority, because a common right to all effects is vested in both re-united



* See the various reading of this text in a subsequent page. T.

re-united parceners by the avoidance of the ſeveral rights proclaimed by a former diſtribution, ſince JÍMÚTAVÁHANA expreſſes, 'parceners, having made a partition, and afterwards 'living together in the ſame houſe as joint-houſekeepers, after 'thus annulling partition, "what is thy property is mine, what '"is my property is thine," are ſaid to be re-united.' It ſhould not be argued, that the term "annulling partition" only ſignifies obviating the mediate conſequence of the characteriſticks of partition, not cancelling any ſeveral veſted rights: were it ſo, ſince it is not a maxim that lots will fall on the ſame chattels *as before*, and ſince the lots caſt may aſcertain a right to other goods, while the original right to the former effects is retained, both re-united parceners might have property in almoſt every chattel after the ſecond partition.

Nor ſhould it be objected, were it ſo, how could the ſhares formerly ordained for a *Bráhmana* and a *Cſhatriya* remain *in a ſecond diſtribution?* Since the text concerning partition among brothers of various claſſes may be applicable to the ſecond as well as to the firſt diſtribution, and ſince it is not contradicted by any other text, it ſhould be ſo eſtabliſhed. Thus the meaning of the phraſe, "their allotments follow the proportions before ordained," is, that the diviſion ſhall be made in that proportion and mode which were obſerved in the firſt inſtance; for this is no leſs a partition *than the former diſtribution was.*

But MISRA thus explains the terms of the text (CCCCVII 1); although ſeniority exiſt, entitling the firſt-born to a greater portion, ſtill that greater allotment ſhall not be given: the ſame legiſlator propounds an exception in reſpect of wealth acquired by learning. The commentator's meaning is this: a larger portion again received in right of ſeniority by birth or the like, under the text of VRĬHASPATI (XLV), becauſe this is alſo a partition of property, is forbidden in this ſecond diſtribution: ſince the claim of the firſt-born to the larger portion, formerly received by him, had been already obviated*, the reſult is the ſame; the only difference conſiſts in the *commentator's* diſplay of learning. As for the

* Great obſcurity pervades the whole argument. The eldeſt has no right to a ſecond deduction: nor does he retain, during renewed coparcenary, his ſeparate property in the identical effects which compoſed his former allotment in right of ſeniority; but he receives, on a ſecond partition, the equivalent of his original due. T.

the remark, that the ſame legiſlator propounds an exception in reſpect of wealth acquired by learning, that is not reſtricted to ſcience; for the exception, which ſhall *now* be mentioned, in reſpect of a double ſhare, muſt be conſidered as relating to acquiſition in general. The legiſlator declares that the acquirer ſhall have a double ſhare in the preſent inſtance, as in the original partition.

## CCCCLX.

VRĬHASPATI:—But if one of the re-united brethren acquire wealth by learning or valour, or the like, two ſhares of it muſt be given to him *on a ſecond partition*, and the reſt ſhall have each one ſhare.

By learning, or valour, or any other means of acquiring ſeveral property. The *Retnácara*.

Conſequently, the law promulged by VYÁSA for the firſt partition (CX), is extended to the ſecond: the acquirer therefore has a double ſhare, according to the *Retnácara* and the reſt, if the wealth were acquired by the ſimple exertion of learning or the like with ſupplies from the common eſtate and ſo forth; but if it be the acquiſition of ſcience technically ſo denominated by CÁTYÁYANA, the common eſtate not being uſed and ſo forth, the wealth thus acquired is the ſeveral property of the acquirer; and if ſupplies were received from the common eſtate and ſo forth, he who is equal or ſuperior in learning has one ſhare, and he who is inferior in knowledge is excluded from participation: if the wealth be acquired by agriculture or the like, without ſupplies *from the common eſtate*, it becomes the ſeveral property of the acquirer; with ſupplies, it is ſhared by all the parceners: this, which has been already explained, muſt be alſo underſtood in the preſent caſe.

But, according to JÍMÚTAVÁHANA and others, the acquirer ſhall have a double allotment, and the reſt ſhall have each one ſhare of wealth any-how gained with ſupplies from the joint ſtock and ſo forth; if the learning were acquired after a maintenance provided out of the common ſtock, all the parceners ſhall have the ſhares ordained for them, although the joint-property were

 not

not employed during the acquiſition of the wealth; but, even though the common funds of ſupport be not uſed during the acquiſition of ſcience, nor during that of wealth, they who are equal or ſuperior in learning participate: if the money be earned without uſe of joint-property, through agriculture or the like, by *the labour of* a body nouriſhed on the joint funds of ſupport, it *nevertheleſs* becomes the ſeveral property of the acquirer, as before explained.

According to all opinions, the diſtribution is regulated by the uſe made of joint-property. What is received from a friend, or on account of marriage, or the like, is held as ſeveral property: the implied ſenſe of the text of VRĬHASPATI muſt be conſidered as extending thus far, according to the circumſtances of each caſe.

When partition is again made after the period of re-union, what ſhare belongs to him who, being ſkilled in the means of acquiſition, had gained much wealth previouſly to the former diſtribution, and who was therefore entitled to two ſhares at the time of dividing it; and what proportion belongs to him who gained much wealth after the original partition? If it be ſaid, an equal ſhare with the reſt; that is inconſiſtent with common ſenſe: equality of allotment conſiſting *only* in the prohibition of a greater portion for the firſt-born, muſt be therefore eſtabliſhed in the text above cited (CCCCVI 1). In like manner, an unequal diſtribution, after the re-union of brothers of various claſſes, is legal. A ſecond allotment of a greater ſhare to the firſt-born is forbidden by the text above cited (CCCCVII 1); the former right to a greater portion is not thereby denied, ſince it had already gained validity. Even on the reading approved by CHANDÉSWARA, (*punar vibhága caranē tēſhám jyaiſht'hyan na vidyaté*, if brothers again make a diviſion of their joint-property, the firſt-born has no right to a larger portion; inſtead of *tēſham vibhága caranē punar jyaſht'hyan na vidyaté*, if they, *who, after ſeparation, have become re-united through mutual affection,* make a partition, ſeniority does not again prevail;) the right of the firſt-born to a larger portion is only denied when a ſecond partition is made.

It ſhould not be argued, that the term "ſeniority" may here bear a general ſenſe, becauſe there is no authority for reſtricting its meaning in the preſent inſtance; and that the term "again" muſt ſignify "but alſo." The larger portion, already received in right

right of ſeniority, cannot now be forbidden: and it is inconſiſtent with common ſenſe, that he who contributed a greater ſum *to the joint ſtock* when he became re-united, ſhould receive back a leſs ſum when a diviſion is made; and further, the caſe is ſimilar to that of the acquirer of wealth, as above mentioned. Nor ſhould it be argued, that, a common right to the whole property being veſted in both re-united parceners, there is no authority for any ſubſequent unequal diſtribution. As wealth gained by partners in trade and adventure trafficking with unequal ſtock is diſtributed in proportion to their reſpective capitals, even though all are equally owners of the wealth thus acquired; ſo, in this caſe likewiſe nothing prevents a ſimilar inference. Accordingly MISRA denies the right of the firſt-born to a larger portion, on a ſecond partition of joint-property, by remarking, 'although ſeniority exiſt, entitling the firſt-born to a greater portion, ſtill 'that greater allotment ſhall not be given.'

Others ſay, the larger portion already obtained in right of ſeniority is not retracted; for the text is intended merely to prohibit the deduction before ordained for the firſt-born: and the remark of JÍMÚTAVÁHANA is intended merely to forbid that allotment in right of ſeniority which had been before ordained, that is, enjoined or declared by legiſlators for the original partition.

VRĬHASPATI defines a re-united parcener (CCCCXXX). According to JÍMÚTAVÁHANA and the reſt, re-union can legally take place among them only who are mentioned in the text, namely, father and ſon, and the reſt. According to CHANDÉSWARA and others, re-union may legally take place among all thoſe, including the great-grandſon, among whom partition can be made. Some hold that diſunited ſons and the reſt have no claim of ſucceſſion, if there be re-united ſons or the like. In no caſe is the re-union of female heirs admitted.

If a man, having made a partition with his ſons, and again reſiding with any one of them as a re-united parcener, die after begetting another ſon, this laſt-born child ſhall be ſole heir of his eſtate, by the text of MENU (CI). "He ſhall make a partition with the brethren who are re-united;" that is, the re-united brethren ſhall receive their reſpective ſhares, and the ſon born after partition ſhall take his father's allotment*. It ſhould not be argued,

* According to this gloſs, the text ſhould be otherwiſe tranſlated. T.

gued, as the meaning of the term "ſhare," that the ſon born after partition ſhall divide *his father's allotment* with his re-united brothers. That would contradict the precept, "a ſon born after a diviſion ſhall alone inherit the patrimony." Nor ſhould it be objected, that this contradicts the precept "a re-united parcener is heir of a re-united one:" that relates to the competition of equal claimants. Nor ſhould it be objected, that partition is proper, becauſe the claim of a re-united parcener in right of renewed coparcenary, and that of a ſon born after partition in right of poſterior birth, are both diſtinct claims. It is ſhown by a text formerly cited (C), that ſons born before the diſtribution have no claim on the wealth retained by the father after partition, if a ſon born after it exiſt: and it is improper to reſtrict that text, unleſs common ſenſe or expreſs law oppoſe *its comprehenſive import;* for re-united parceners have been enriched by their own ſhares, but the ſon born after partition has no means of ſubſiſtence beſides his father's ſhare.

If he who is re-united with another brother poſſeſs any undivided property, on whom does the right thereto ſubſequently devolve? It goes to the re-united parceners only; for a text above cited (CCCCXXVI), ſhows that brethren who have renewed coparcenary excluſively inherit the wealth of a re-united brother, and this undivided property belonged to a re-united parcener.

The text of NÁREDA (CCCCXXXIII) is thus read by MISRA: "The veſted ſhare of re-united brothers is declared to belong excluſively to them; otherwiſe it ſhall go to their *mutual* heirs; or to others, if they leave no iſſue*." If there be no heir, whoſe claim is preferable to that of re-united parceners, the ſucceſſion devolves on them, although there be a diſunited claimant as near of kin; otherwiſe, that is, on failure of re-united parceners, the heritage goes to their *mutual* heirs, namely to the ſons or other deſcendents of a re-united parcener. Of two coheirs, who have renewed coparcenary, if one die childleſs, after the demiſe of the other who did leave male iſſue, the ſons of the re-united parcener inherit the eſtate: ſuch is the meaning. If they leave no iſſue, that is, no ſon or other male deſcendent, it goes to others, namely to the widow and the reſt. Conſequently, in ſuch a caſe, the

* The difference of the reading is, *atò'nyat'háns'a bhájas tu*, inſtead of *ato'nyat'hánans'a bhájah.*

the legal heirs of a re-united parcener ſhall alone take his inheritance; no others *ſhall take it*, neither diſunited parceners nor their legal heirs. Some lawyers ſo expound the text.

The veſted ſhare of re-united parceners belongs excluſively to them; it appertains excluſively to re-united parceners: mentioned as grounds for ſhowing, that, on failure of them, the ſucceſſion devolves on others. Or it conveys a precept on the doubt whether all ſons may claim partition, becauſe the eſtate of the deceaſed was in effect wealth acquired by their father or by his anceſtors; and becauſe they are equally *his* ſons, *and therefore heirs* by the texts of DÉVALA and the reſt (V). Otherwiſe, that is, on failure of re-united parceners, *the ſucceſſion devolves on* their heirs, that is, *on* their ſons and the reſt. If re-united parceners die, leaving no male iſſue, it goes to others, that is, to diſunited coheirs. Such is the expoſition approved by MISRA. It may alſo go to any others whomſoever, according to the circumſtances of each caſe, conformably with the rules of deciſion above mentioned.

MISRA here obſerves, it is not the meaning of the firſt hemiſtich, that the ſame ſhare which belonged to each at the time when re-union took place, ſhall be recognized and preſerved from him when partition is again made: for, in a community of goods by re-union with half the former wealth, the phraſe would bear a ſpiritual ſenſe, if ſuch were the ſtrict rule.

In the *Párijáta*, the text is read, ſharers of the wealth of others than theſe *(atő'nya dhanánśa bhájah)*. But that is rejected, as differing from many copies. The *Retnácara.*

As for what is ſaid in the text of CÁTYÁYANA (CCCCXXVII), on the ſubject of one taking the heritage on failure of the other, the legiſlator limits the precept, by ſaying, "if they have no progeny;" the meaning is, becauſe they reciprocally ſhare their eſtates if they have no offſpring. MISRA.

"Leaving no iſſue" is an expreſſion merely illuſtrative, comprehending one who leaves no wife or the like. Hence a re-united brother, or other coheir, has no right of inheritance, if he who has no ſon leave a widow: and thus the doubt is removed, whether all ſons ſhall equally ſhare the eſtate on the death of their father, who had made a partition with his children, and who was re-united with one of them, becauſe the leaving no iſſue is ſtated as a ground of a diſtinction relative to re-union; for, taking the term

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in a comprehenſive ſenſe, it muſt neceſſarily extend to brothers and the reſt; elſe a re-united uncle would inherit the wealth of of his re-united nephew, although a brother exiſt. Therefore, on failure of preferable claimants, thoſe, among equal claimants, who were re-united with the deceaſed, inherit the wealth of a re-united parcener. Here again, in reſpect of brothers and the reſt, a diſtinction ſubſiſts, founded on texts of law, and relative to the whole and half blood: thus alſo it is neceſſary to take the word "iſſue," in MISRA's definition, as ſignifying preferable claimant; for it is ſaid, a diſunited ſon has no claim if there be a re-united one. As for the argument, that the word "ſeed" in the text above cited (CCCCXXVII) obviouſly preſenting the ſenſe of offspring, it is conſiſtent with juſt reaſoning to conſider the diſtinction relative to re-union, as implying the failure of offſpring, there appears this objection to the argument; ſince it is a maxim, that, on failure of preferable claimants, thoſe, among equal claimants, who were re-united with the deceaſed, have a title to inherit, the independent condition "excepting ſons and the reſt," is troubleſome and groundleſs; for the term, "leaving no iſſue" may bear the ſenſe above mentioned.

CHAP.

# CHAP. IX.

ON

# SUCCESSION TO FEMALES.

## SECT. I.—*On the Property of Women.*

CCCCLXI.

NÁREDA:—On the death of the father let ſons divide his eſtate, and let daughters ſhare the wealth of their mother; or, on failure of them, let their iſſue take it.

"Paternal," or parental in the text of MENU (IV), being derived from a term expreſſive of both father and mother, (the laſt being underſtood,) the eſtate of the father and that of the mother are meant. CULLÚCABHATTA.

Conſequently daughters and ſons ſucceed to the eſtate of their mother. Such in effect being the ſenſe, what ſort of property left by her ſhall be taken, and by whom? To diſtinguiſh this, the various ſorts of ſeparate property held by a mother are diſcuſſed. On this ſubject,

CCCCLXII.

MENU and CÁTYÁYANA:—What was given before the nuptial fire, what was given at the bridal proceſſion,

cession, what was given in token of love, and what was received from a mother, a brother, or a father, are considered as the six-fold *separate* property of a *married* woman.

What was bestowed by any person whomsoever, before the nuptial fire, at the time of the marriage: "what was given on the bridal procession;" that is, a present following a bride when she is led to the house of her husband; and what was given in token of love, that is, bestowed by her father-in-law, or other person whose affection is engaged by her good temper, probity, skill, and other good qualities. "Six-fold" is mentioned to except a less, not a greater number; for a present given to a superseded wife, which is another sort of separate property held by a woman, is also mentioned by YÁJNYAWALCYA.

The *Retnácara*.

## CCCCLXIII.

YÁJNYAWALCYA:—What a father, a mother, a husband, or a brother, has given to a woman, what is presented to her before the nuptial fire, what she receives *to appease and console her* on the second marriage of her lord, are universally considered as her separate property.

When the bride is conveyed from the house of her guardian to the abode of her lord, what is then bestowed by her father-in-law and the rest is a present given on the bridal procession. So the *Mēd'hátit'hi*. This should be also comprehended *in the enumeration of separate property;* for the reasoning is equally applicable.

The *Retnácara*.

CÁTYÁYANA explains the present given before the nuptial fire:

## CCCCLXIV.

CATYÁYANA:—Whatever is given to women at the time

time of their marriage before the ſacred fire, *which is the witneſs of nuptials*, is denominated by Sages their property "given before the nuptial fire."

"Whatever is given:" here the perſon who makes *the gift* is not her father, or other relation; for, were ſuch the meaning, it would ſimply intend "what was received from a mother, a "brother, or a father." Therefore it means only what is given by any perſon whomſoever, whether he be or be not allied by blood. Accordingly it is ſaid by the author of the *Retnácara*, 'given by any perſon whomſoever at the time of her marriage.' What friends alſo give at the time of a girl's nuptials, in token of reſpect to the damſel, is her *ſeparate* property. As the practice ſubſiſts in this country for the friends of the bridegroom to give the woman ſome trifle in token of reſpect, ſo it appears that a practice ſubſiſts in ſome countries for the friends of the bride's father to give the damſel ſome trifle.

The ſame legiſlator explains a preſent given on the bridal proceſſion:

## CCCCLXV.

CÁTYÁYANA:—What a woman receives from the family of her parents, while ſhe is led to the houſe of her huſband, is called the property of a woman "given at her proceſſion."

What is given by any perſon whomſoever in honour of a bride going from the houſe of her father to the manſion of her huſband, is a preſent given at her proceſſion. Accordingly the author of the *Retnácara* has ſaid, 'a preſent following a bride.' What is given on account of a bride going in proceſſion is given at her back; for ſhe goes before, and properly the gift follows her. Such is the popular language.

Does her proceſſion to the houſe of her huſband conſiſt in going thither at the time of the nuptial ceremony, or at that of the *final* proceſſion of both *bride and bridegroom to the huſband's houſe*, or at any other time? On this point nothing has been ſaid by

by the author of the *Retnácara*. But MISRA affirms, 'at the time of the final proceſſion of both *bride and bridegroom to the huſband's houſe*.' On the other hand, JÍMÚTAVÁHANA, not finding that preſents are given by friends to a bride, while ſhe is led from the houſe of her father to the abode of her huſband, interprets the text otherwiſe; 'what a woman receives from the family of her father or mother, while ſhe is led to the houſe of her lord.' It muſt be conſidered, that the ſame ſenſe being deduced from the phraſe, "what was received from a brother, or a mother, or a father," the ſeparate mention of a preſent given on the bridal proceſſion would be fruitleſs.

What was given *in token of affection* by her father-in-law and the reſt. Such is the interpretation of "given," according to the *Retnácara*. MISRA remarks on the three ſorts of property beſtowed by a mother and the reſt, that the meaning is obvious. The agent in the phraſe, "given in token of love," may be the family of her huſband; "what was given to a woman by his family:" it may therefore comprehend what is received by a woman on the ſecond marriage of her lord. "Mother" is a term illuſtrative of the family of her mother, and ſo is father illuſtrative of his family. "Brother" is again mentioned to denote his pre-eminence by the ſame rule by which two names of kine are at once uſed in a general and particular ſenſe.

Thus, ſince there is no ſeparate property of women different from thoſe ſix ſorts, it may be objected to the opinion delivered in the *Retnácara*, that it was uſeleſs to ſay, '*the enumeration is intended* to except a leſs number.' By parity of reaſoning, the ſame objection may be alſo made to what has been ſaid by MISRA and others, "it is intended to except a leſs number."

## CCCCLXVI.

CÁTYÁYANA:—Any thing which is given to a woman by the mother or father of her huſband in token of affection, and that which is given in return of her humble ſalutations, is called wealth gained by lovelineſs.

"Lovelineſs"

"Lovelinefs," confifts in good temper, fkill *in feminine arts*, and the like. *A prefent in token of affection*, and what is given by the father or mother of her hufband, to a woman endowed with good temper and other amiable qualities, and who humbly falutes their feet, conftitute the third fort of exclufive property.

MISRA.

Since a prefent given through affection is feparately mentioned by CÁTYÁYANA, does it not follow that a prefent given by her hufband is not the fame with one beftowed through affection? No; for her hufband and others may alfo be included in the text, fince the particle "or" is ufed indeterminately in the expreffion "by the mother or father of her hufband:" and there is no difficulty in confidering the laft hemiftich of the verfe as a feparate phrafe; for the fenfe of the text is this, what is given by the mother of her hufband, and by *certain* other perfons, is beftowed through affection, and what is obtained by lowly falutations is acquired by lovelinefs. The whole cannot be taken as a fingle phrafe, bearing this fenfe, 'what is given by the mother of her hufband, and by *certain* other perfons, is a return for humble falutations, and that alone is called the acquifition of lovelinefs;' for one of the relatives would be unmeaning. It fhould not be objected, that a prefent given in token of affection alone conftitutes the third fort of *exclufive* wealth; and that a gift to a fuperfeded wife is not a prefent given in token of affection, becaufe it is received by the woman when difpofed to wrath and the like by reafon of the fecond marriage of her lord. Still the prefent cannot be given without tendernefs, for her hufband is moved to affection by her affent to his fecond marriage; and the difficulty is removed, by confidering the term "in token of affection" as merely illuftrative.

YÁJNYAWALCYA explains a prefent given to a woman on the fecond marriage of her lord (LXXXVII). She, above whom a marriage is contracted, is a fuperfeded wife *(adhibinná)*. So the *Retnácara*. *Adhi* is therefore ufed in the fenfe of above; and *bédana*, in the fenfe of taking a bride, according to the literal meaning of the verb *bidrì*, take. Confequently the fecond marriage of her hufband is fuperfeffion of a wife; and a prefent received on the fecond marriage *of her lord* fhall be fo much only as is promifed *to confole her* for the fuperfeffion. "But if *fuch*



wealth,

wealth, *as is usually given to women*, had been delivered to her, ſhe is held entitled only to a moiety or part;" that is, the ſum promiſed ſhall be completed by wealth previouſly and ſubſequently beſtowed. If a larger ſum had already been given, ſome trifle muſt be delivered to fulfil the promiſe of a preſent.

So much only as is given to the wiſe who is now eſpouſed, muſt be given to the wife who is ſuperſeded.

SRÍ CRĬSHNA TERCÁLANCÁRA.

The word "equal" ſignifies ſo much only as is expended on the ſecond marriage. VIJNYÁNÉSWARA.

In the ſecond * of theſe three expoſitions there is *this* defect: not ſhe, but another woman, is the perſon to whom the ſum promiſed is given; and it would not be a preſent on ſuperſeſſion by the ſecond marriage of her lord, ſince ſuperſeſſion is not the cauſe of giving that ſum: neither is the ſecond marriage the *immediate* cauſe of giving a preſent to the firſt wife. When the ſecond nuptials have taken place, and nothing has been expended on them, ſince nothing would in that caſe be given according to this *(third)* opinion, the ſecond marriage, jointly with the expence of it, is not the *immediate* cauſe *of giving a preſent to the woman:* her being the firſt wife is the ſole cauſe. Thus there is no certainty in theſe two interpretations. It cannot be a poſitive precept, that the term "equal," though parity be always requiſite, ſhall refer only to the amount expended or the like. Again; if that which is given to a ſecond wife endowed with pre-eminent qualities muſt alſo be given to the firſt wife, this would contradict common ſenſe. A rule of practice ſhould be formed on due conſideration *of theſe difficulties*.

## CCCCLXVII.

VISHNU:—The property of a female is that which her father, mother, friend, or brother has given her; what ſhe received in the preſence of the nuptial fire; *on the bridal proceſſion;* or when her huſband

* The manuſcript has "firſt;" but the objection is only applicable to the ſecond. T.

husband took a second wife; what her husband agrees to be her perquisite; and what is received from his or her kinsman as a gift subsequent to the marriage.

It should not be argued, because more than six sorts of property are mentioned in this rule of VISHNU, that the text of MENU must necessarily be considered as an exception of the less number. Friends and the rest are comprehended in "the family of her father." "Received" *(upágata)* may signify what is bestowed on account of her coming, that is, a present given on the bridal procession. The present received when her husband took a second wife, must be reconciled, in the mode above mentioned, *with one of the other sorts enumerated.* Her perquisite, and a gift subsequent, are in effect given by her husband and the rest.

## CCCCLXVIII.

CÁTYÁYANA:—What is received by a woman after marriage from the kinsmen of her lord, or from those of her parents, is called "a gift subsequent:"

2. But BHRĬGU gives the name of "subsequent gift" to any thing received by her after the nuptial ceremony, from her husband himself, or from her parents, through pure affection.

3. The trifle which is received by a woman as the price *or reward* of household *labour,* of *using household* utensils, of *keeping* beasts of burden, of *watching* milch cattle, of *preserving* ornaments of dress, or of *superintending* servants, is called her "perquisite."

Consequently, what is received after marriage from the family of her husband, mother, or father, and what is received from her husband himself, from her mother, or from her father, is a gift subsequent. Such is the explanation approved by JÍMÚTAVÁ-

HANA. To include a preſent given before marriage *in the enumeration of ſeveral property*, what was given by the mother, father, or brother, has been already mentioned. It ſhould not be objected, that ſtill the word "ſon" in the rule of VISHNU, as read by MISRA, ("that which her father, mother, ſon, or brother, has given her,") is unmeaning. That word may ſignify ſon by another wife of her huſband.

JÍMÚTAVÁHANA reads the text of CÁTYÁYANA (ccccl viii 1) "and ſo received from the family of her kinſman *." He adds this gloſs: the word "kinſman" intends maternal uncles and others; for her father and the reſt would be ſuggeſted by the term "her own *family*." On the other reading, which is followed in the *Retnácara* and other works, "what is received by her from her own family †," the expreſſion "her own family" muſt ſignify that from which ſhe ſprung, namely the family of her father and mother. Hence, ſay ſome lawyers, the word "ſon" is pertinent.

"The trifle which is received, &c." (CCCCLXVIII 3); what is obtained by a woman from the maſter of the family, as a reward for doing the buſineſs of the houſe, and making houſehold utenſils and the like, is her perquiſite. So MISRA. The meaning is, what the maſter of the houſe, pleaſed with the performance of the houſehold buſineſs, gives *to a woman*, is her perquiſite.

As for what has been ordained by VYÁSA (Book II, Ch. IV, v. XXIX), which is thus expounded by JÍMÚTAVÁHANA: 'a gift to the bridegroom, with a declaration of its uſe in this 'form, "let this belong to the bride," but not a gift made 'without ſuch *declaration of the* purpoſe, *ſhall be her entire property;* accordingly, "at the time of her nuptials" is mentioned merely by way of illuſtration: it is not an indiſpenſable 'condition; for the declared intention of the giver is the cauſe 'of property *veſting in her:*' and as for the authentic text on the ſame ſubject, which is cited by JÍMÚTAVÁHANA, and in which the term "at the time of her nuptials" is omitted (Book II, Ch. IV, v. XXX): theſe precepts do not ſhow the independence of a woman who poſſeſſes wealth denominated the property of a female;

* Labdham bandhu culát tathá.

† Yal labdham ſwa culát tayá.

female; for the bridegroom is mentioned as the perſon who received the gift (" what ſhall be given to the bridegroom"): and the ſecond text ſhows, that during her life a woman enjoys ſuch wealth in concert with her huſband, forbids the alienation of it without her own *expreſs* ſanction, and reſerves it for herſelf when partition is made *among her ſons* in their father's lifetime; and that after her death her ſons ſhall alone obtain that wealth, on a partition made during the life of their father, or on a diſtribution among brothers *after his demiſe:* or elſe, upon the reaſoning delivered under the title of Subtraction of Gift, if the ſole property of the wife be acknowledged, and her independent power over it *be* alſo *admitted* on the ſuggeſtion of JÍMÚTAVÁHANA, then likewiſe that wealth is inconteſtably wealth given by her father. But 'SÚLAPANI, CULLÚCABHATTA, and the reſt, admit, that the preſents received before the nuptial fire, or on the bridal proceſſion, may have been given by her father and the reſt. Here, ſince it is improper to bar the comprehenſion of ſtrangers in the term " and the reſt," preſents received before the nuptial fire, or on the bridal proceſſion, are diſtinct from thoſe which are given by her father and other relatives; conſequently the ſeparate property of married women is inconteſtably ſix-fold. What was received from a father, and what was obtained from a mother, are therefore two ſorts of ſeparate property; what was given by a brother or by a kinſman is one ſort; *theſe* and what was obtained from the family of her huſband, a preſent accepted before the ſacrificial fire, and one received on the bridal proceſſion, are ſix ſorts of ſeparate property held by women.

JÍMÚTAVÁHANA explains " given by a kinſman," beſtowed by a maternal uncle or the like. 'SÚLAPÁNI expounds it, given by a kinſman of her mother, or by a relation of her father. Only ſix ſorts of ſeparate property held by women are *yet* ſeen, how *then is it ſaid* this *is* an exception of a leſs number?

NÁREDA alſo propounds ſix ſorts of ſeparate property held by women:

## CCCCLXIX.

NÁREDA:—Gifts to a woman at the nuptial fire, at her proceſſion, by her huſband, her brother, her

 father,

father, or her mother, conſtitute her ſix-fold property.

A gift by her huſband includes the preſent given in token of love, as propounded by MENU. Again: huſband, and other terms expreſſive of connexion or relation, ſignify alſo their families; but the word "brother" denotes kinſman, as in a former inſtance; or it literally ſignifies "brother," *the conſequent repetition being juſtified* by the ſame rule by which two names of kine are at once uſed in a general and particular ſenſe.

## CCCCLXX.

CÁTYÁYANA:—But whatever wealth ſhe may gain by arts, *as by painting or ſpinning*, or may receive on account of friendſhip from any but the kindred of her huſband or parents, her lord alone has dominion over it: of her other property ſhe may diſpoſe *without firſt obtaining his aſſent.*

"Arts" in this text is expreſſed in the plural number, with the ſenſe of "and the reſt." Conſequently her huſband has independent power over all other wealth except the ſix-fold property of a woman. What then is the rule in reſpect of an eſtate devolving on her, from her father or other relative, *on failure of male heirs?* It ſhould not be anſwered, ſhe is ſubject to the controul of her huſband, even in reſpect of this eſtate, becauſe it is not included in the ſix-fold property of women. Since the eventual heir of her father and the reſt is, at a ſubſequent time, ſole heir of wealth which had devolved on her from her anceſtors, it contradicts common ſenſe that this ſhould be ſubject to the controul of her huſband. To the queſtion thus propoſed the anſwer is, it is ſubject to his controul ſo long only as it remains in the poſſeſſion of his wife; afterwards, it ſhall be received by the legal heir of her father and the reſt.

On the opinion of thoſe who acknowledge the ownerſhip of her huſband in wealth acquired by his wife, not ſimple controul over it, how can the legal heirs of her father ſucceed on the death of

of the wife, since her husband's title is not devested so long as he lives? In truth, JÍMÚTAVÁHANA alone contends for the succession of her father's heirs, after the death of the daughter, to the patrimony which devolved on her *by the failure of male issue;* and he does not acknowledge the property of the husband in the wealth of his wife: but those who do not acknowledge the husband's claim, must not admit the succession of her father's heirs to the patrimony which has devolved on the daughter; for no text nor reasoning shows it. As for the argument, that, since this occurs in the succession of a wife who is the first entitled to the estate of one who leaves no male issue by males, the same should be also established in other cases, when a daughter or the like has succeeded; that argument would be also intruded in other remote cases, *such as the* succession of a daughter's son, or of a brother: and that is not founded on positive ordinances, but established by authors on the sole suggestion of their own understandings; it is not even noticed by CHANDÉSWARA and the rest. On the opinion of those who maintain the property of both *husband and wife* in her wealth, there is no difficulty whatsoever; for, it may be established that the husband's title is lost on the devesture of his wife's.

"From any other" (CCCCLXX): in that which is received from any but the kindred of her father, mother, or husband, and in that which is acquired by arts, her husband has ownership, and has independent power over it, that is, he may with propriety seize it, even though suffering no distress. Hence, though it belong to the woman, it is not her separate property *in contemplation of law*, for she is not independent. It is a remark of JÍMÚTAVÁHANA, RAGHUNANDANA, and the rest, that a wife has property, subject to the controul of her husband, in wealth devolving on her *from her own family*. That it becomes the property of her husband, is stated as the opinion of ancient authors. But some lawyers argue, that the estate of her father, devolving on his daughter *by the failure of male issue*, becomes her separate property; for the patrimony which devolves on a daughter *by the failure of male issue* is not mentioned in the text above cited (CCCCLXX); and a subsequent precept of CÁTYÁYANA (CCCCLXXV) states simply "what a woman receives:" and this they hold to be the meaning of JÍMÚTAVÁHANA himself.

That *last inference* we do not admit; for it is no-where seen, that a woman has independent power over any thing which is not given to her: the expression "of her other property she may dispose" (CCCCLXX), declaring that only to be the *separate* property of a woman over which her husband has not independent power, it is *a* just *inference*, that he has such power over that only which is different from the six-fold property *of women*, as propounded by MENU and the rest. But if it be affirmed as the opinion of JÍMÚTAVÁHANA, that "this is a third kind of property;" (thus wealth over which a woman has independent power, and which is called her separate property, is the first kind; that which was acquired by arts or the like, and which is subject to the controul of her husband, is the second kind; the wealth which has devolved on her *from her ancestors* is the third sort, and both *husband and wife* have independent power over it:) that could only be admitted, *as the opinion of* JÍMÚTAVÁHANA, if it were confirmed by reasoning; but it contradicts common sense. It has been thus remarked in books, that the observation of authors, 'the enumeration is only intended to except a less number,' is thus contradicted; for *all* sorts of *exclusive* property held by women fall within the six denominations which have been mentioned. The observation, that the intention is to except a less number, is not pertinent; for the six sorts of property are described by their respective names. Nor is it to the purpose that the same CÁTYÁYANA, who declares the property of women to be six-fold, exhibits a greater number; for his meaning is, that every thing which is received by a woman, before or after marriage, from her father, or from his relations, or from the family of her husband, is her property given by affectionate kindred. The object of this *remark* is the food, vesture, and the like, which will be declared *to be the exclusive property of a woman*.

Some lawyers hold, that the number specified is affirmed to be an exception of a less one, because the perquisites mentioned in the text of DÉVALA (CCCCLXXVIII), and in a precept of VISHNU above cited (CCCCLXVII), constitute an additional sort *of exclusive property*: for example, according to the interpretation of JÍMÚTAVÁHANA, what is given as a bribe to a woman, by householders, by artisans, or by others, to send her husband

and

and the rest to perform work required by them, is her perquisite; it is the price *or reward* of labour, because the purpose is to entertain *a labourer*. The exposition delivered in the *Retnácara* is similar; but the interpretation of MISRA should be followed. Consequently, this wealth, being given by others than the kinsmen of her father and the rest, does not fall within the six-fold property *of women*. It should not be answered, this is only intended by the text, "whatever she may receive, on account of friendship, from any but the kindred of her husband and parents" (CCCCLXX). That phrase is only applicable to a different case.

*To the argument of these lawyers the answer is:* if perquisite, which is an obscure term, can by any interpretation be included in the six sorts of property, why should the texts of Sages be otherwise expounded, by affirming an unusual sort *of property* exceeding that enumeration? for what a kinsman, being much pleased with her management of household affairs, bestows on a woman, is her perquisite; as that which is given in return for humble salutation is her property gained by loveliness: these and other acquisitions may be considered as distinct sorts of wealth given by her husband's father and the rest.

The sense of the text (CCCCLXX) is this: what is received by a woman on account of work in household affairs and so forth, is the price of her labour, as it were her wages (for such is the subject of the text); what is *so* given to a woman is called her exclusive property, under the name of perquisite. Here, "house," is obvious; "household utensils," are brooms and similar things; "beasts of burden," are oxen and the like; "milch cattle," are cows and the rest; "ornaments of dress," are things worn for decoration; workmen are slaves *or servants:* the meaning in effect is, what is given through satisfaction at her skill in sweeping *with brooms*, in keeping and watching cattle and the rest, in commanding the slaves and so forth, or what is given as a bribe to undertake these several employments. But VYÁSA otherwise defines a perquisite (*'sulca*). JÍMÚTAVÁHANA.

CCCCLXXI.

## CCCCLXXI.

Vyása :—That which is given to bring *the bride* to the family of her hufband is her perquifite; which is given as a bribe or the like, that fhe may cheerfully go to the manfion of her lord.

We hold that authors have otherwife expounded the texts of legiflators, confidering that alfo as the exclufive property of women which is given to wives and others as a bribe to fend *their hufbands and the reft* to perform work, fuch as thatching a houfe and the like ; or *they have delivered fuch an expofition*, admitting fome difference in the gifts fubfequent *to marriage*, which have been fpecially defined. The difference in the two interpretations fhould be examined ; no argument is found *to fhow* why a woman fhould not have independent power over that which fhe has gained by arts, or which has been given to her by a ftranger on a religious confideration, or through friendfhip, but fhould have independent power over *that which was received as* a bribe.

" Food and vefture ;" what is given for her fupport : this coincides with a fubfequent text (CCCCLXXV 2). " Ornaments ;" ornamental apparel. " Perquifites ;" what is given to a damfel on afking her in marriage. " Wealth received ;" that which is obtained from a kinfman. All this is the exclufive property of a woman. Misra and Chandéswara.

The perquifites, which have been already explained, may be alfo underftood *to be meant*.

## CCCCLXXII.

Apastamba :—Ornaments are the exclufive property of a wife, and fo is wealth given to her by kinfmen or friends, according to fome *legiflators*.

The meaning is, ' wealth given to her by friends is the exclufive property of the wife.' " According to fome legiflators ;" this is mentioned to fhow a regulated alternative : what is given by

by kinſmen on the marriage of their relative, at the time of the nuptial ceremony or the like, is the excluſive property of a woman; but her lord has dominion over that which is preſented at any other time. Accordingly, CHANDÉSWARA remarks on the phraſe, "and ſo is wealth given to her by kinſmen or friends, according to ſome legiſlators," that wealth received at the nuptial ceremony, which is called a preſent given on account of marriage, is alſo the excluſive property of a wife.

## CCCCLXXIII.

MENU and VISHNU, on the ſubject of ornaments:—Such ornamental apparel as women wear during the lives of their huſbands, the heirs of thoſe huſbands ſhall not divide among themſelves; they who divide it among themſelves fall deep *into ſin.*

That ornamental apparel which is worn by women during the lives of their huſbands, with their aſſent, the ſons and the reſt ſhall not divide when partition is made after the death of thoſe huſbands; they who divide it become ſinners.

CULLÚCABHATTA.

In ſo much only is that ornamental apparel the excluſive property of a wife. So the *Médhâtit'hi*, the author of the *Pracáśa*, CHANDÉSWARA, VÁCHESPATI MISRA, RAGHUNANDANA, and others.

The aſſent of her lord is indiſpenſably neceſſary; and it is alſo requiſite that this apparel ſhould have been the ſeveral property of her huſband, as declared by MENU.

## CCCCLXXIV.

MENU:—A woman ſhould never make a hoard from the goods of the kindred *which are* common *to her and* many; or even from the property of her lord, without his aſſent.

Wives

Wives and other women ſhould never make a hoard for their own ornamental apparel and the like, out of the wealth of the family, *which is* common to many, *namely* to brothers and the reſt; nor ſhould a hoard be made, even from the property of her huſband, without his acquieſcence: hence this does not become the excluſive property of the woman. CULLÚCABHATTA.

By ſaying "women ſhould never make a hoard," it is forbidden to take ſuch goods; but it is not ſuggeſted, that, if the chattels be taken, the object is unattained: why then is it ſaid, 'this does not become the excluſive property of a woman?' The anſwer is, ſince a right cannot be gained, if ſhe take the effects without the aſſent of the owner, this does not become her excluſive property: but if none afterwards moleſt the woman who has ſo taken the goods, a title is gained by occupancy; for the maxim expreſſes, "what is not forbidden is permitted." Elſe the enunciation of the text would be ſuperfluous, ſince gift could only take place by expreſs aſſent in theſe words, 'be this thine.' Or the ſenſe of the text may be this; a title is only gained by aſſent thus expreſſed, "wear this apparel." It ſhould not be objected, how can it become her property ſince ſhe has not acquired it? Habitual wear is conſidered as a mode of acquiſition under the authority of the text. When another does not oppoſe the uſe of that apparel, the *tacit* permiſſion of wearing it exiſts; elſe why is it not reſiſted? But if he do not oppoſe it, fearing to arouſe anger, or to cauſe a breach of friendſhip, then indeed it does not become the property of the woman, notwithſtanding ſuch ſilent aſſent.

But CHANDÉSWARA, referring the word goods to the proximate term family or kindred, ſays, women ſhould not make a hoard, or deliberately take wealth out of goods common to many, without the aſſent of the owners; nor even take it from the property of her huſband, which is not common to him and another family, without the aſſent of the owner. It follows, that, if ſhe take it from property belonging to a numerous family, by conſent of all the owners, it legally becomes her excluſive property: but that is not deduced from the literal ſenſe of the text, and is therefore unacknowledged by CULLÚCABHATTA. It ſhould not be argued, this is ſuggeſted by the precept, "the heirs of thoſe huſbands ſhall not divide it among themſelves;" becauſe otherwiſe

otherwiſe it could not be ſuppoſed that apparel, being the ſole property of her lord, might be divided by other heirs, and the prohibition would therefore be unmeaning. Heirs may here ſignify ſons; it is conſequently ordained, that ſons ſhould acknowledge ornamental apparel worn *by the woman*, with the aſſent of her lord, to be the excluſive property of their mother. It is declared by MENU and VISHNU (CCCLXIII), that ornaments worn by mutual conſent are indiviſible. From the concurrent import of theſe texts, CHANDÉSWARA has affirmed this. Conſequently, thoſe ornaments which are worn by the wives of coheirs, with their mutual conſent, become the excluſive property of thoſe women.

If one brother have conceded ornamental apparel to the wife of another, and afterwards that other brother, *namely* the huſband of the woman who is already provided with ſuch apparel, refuſe to concede ornaments to the wife of that *firſt* brother, what ſhall be the conſequence? The ornaments already worn by one have legally become indiviſible property, under the authority of the text (CCCLXII); the king, however, ſhall compel the conceſſion of ſuitable ornaments to the wife of the *firſt* brother; or elſe, when partition is finally made, a ſufficient ſum muſt be firſt ſet apart to provide ſuch ornaments, and they may then proceed to partition: but if they be deſtitute of wealth when a ſeparation takes place, another rule muſt be followed.

Such is the nature of excluſive property held by women: they, not their huſbands and the reſt, have independent power over it, as owners of that property. The following texts declare it:

## CCCCLXXV.

CÁTYÁYANA:—What a woman, either after marriage or before it, either in the manſion of her huſband or of her father, receives from her lord or her parents, is called a gift from affectionate kindred;

2. And ſuch a gift having by them been preſented through kindneſs, that the women poſſeſſing it may

may live well, is declared by law to be their abſolute property:

3. The abſolute excluſive dominion of women over ſuch a gift is perpetually celebrated; and they have power to ſell or give it away as they pleaſe, even though it conſiſt of lands and houſes.

4. Neither the huſband, nor the ſon, nor the father, nor the brother, have power to uſe or to aliene the legal property of a woman:

5. And if any of them ſhall conſume ſuch property againſt her own conſent, he ſhall be compelled to pay its *value with* intereſt to her, and ſhall alſo pay a fine *to the king*;

6. But if he conſume it with her aſſent, after an amicable tranſaction, he ſhall pay the principal only, when he has wealth *enough* to reſtore it *.

7. Whatever ſhe has put amicably into the hands of her huſband afflicted by diſeaſe, ſuffering diſtreſs, or ſorely preſſed by creditors, he ſhould repay that by his own free will.

"In the manſion of her huſband:" the words are ſo connected. "From her brother † or her parents:" this is merely illuſtrative. Hence, what is received by a woman, either after marriage or before it, in the manſion of her huſband or in the houſe of her father, from her mother, from her father, or from other *perſons*, is *called* a gift from affectionate kindred.

CHANDÉSWARA.

MISRA delivers a ſimilar expoſition; but, inſtead of ſaying "from other perſons," he ſays, from her own kindred, or from the relations of her lord. There is this difference:

That which is received from affectionate kindred *(ſudâya)*, is the gift of affectionate kindred *(ſaudáyica)*. JÍMÚTAVÁHANA.

That which is received from an affectionate father, mother, or huſband,

* Book I, v. LXXIII.

† In a former citation the text was read "huſband" *(bhartuh*, not *bhrátuh)*. T.

husband, or from the kindred of these, is a gift from affectionate kindred. "Through kindness;" through tenderness.

RAGHUNANDANA.

Such a gift is declared by law to be the absolute property of a woman. She may therefore consume it without the assent of her husband or guardian. As for the remark, that the absolute exclusive dominion of women over such property is an explanatory precept, whence it follows, that their husbands have not absolute dominion over that property, and that the legislator himself so explains his meaning (CCCCLXXV 4): the remark is erroneous; for it would contradict the design to propound an explanatory precept, without first delivering a text suggesting the absolute dominion of women over such property. That a precept is explanatory, is deduced from the priority of another ordinance.

The legislator next declares, that a woman may sell or give away her own separate property, without the assent of any other person (CCCCLXXV 3); "even though it consist of lands and houses." A woman has absolute exclusive dominion over such gifts, consisting of lands and houses, except such immoveables as her husband gave her. The *Retnácara.*

NÁREDA propounds this exception of such immoveables as her husband gave her:

## CCCCLXXVI.

NÁREDA:—Property given to her by her husband through pure affection, she may enjoy at her pleasure after his death, or may give it away, except land or houses.

But some lawyers, considering the two subjoined texts of CATYÁYANA as relating to the separate property of women, because they are placed under that title, affirm that the precepts must be thus expounded: wealth given by her husband, even though it consist of gems and the like, she must not, while he lives, give to any person, nor entrust it to another; by the authority of the text: but immoveable property she must not give to any person whomsoever, even after the death of her husband.

CCCCLXXVII.

## CCCCLXXVII.

Cátyáyana :—What a woman has received as a gift from her husband, she may dispose of at pleasure after his death, *if it be moveable;* but, as long as he lives, let her preserve it with frugality: or she may commit it to his family.

2. The childless widow, preserving inviolate the bed of her lord, and strictly obedient to her spiritual parents, may frugally enjoy *the estate* until she die; after her, the legal heirs shall take it.

"The childless widow;" considering that the several property of a woman may be resumed, if she do not preserve unsullied the bed of her lord (CCCCV 2), the legislator propounds this text. This maxim being true in respect of the several property over which a woman has exclusive dominion, the same is equitable in respect of an estate devolving on her by the failure of male issue. Or this text may not solely relate to the peculiar property of a woman, but to any effects which she holds as such: thus, according to Chandéswara and the rest, there exists a coincidence with the last text; but, according to Jímútaváhana, with both. These lawyers so expound the law.

The author of the *Pracása* announces the opinion of Chandéswara. Heláyudha and the *Párijáta* say, both those texts relate to the peculiar property of a woman, because they are placed under that title. Gems and the like given by her husband, must not be aliened whilst he lives; those which belonged to him, but devolve on her by failure of male issue, and both sorts of immoveables which had belonged to her husband, must never be aliened by a woman: such is the opinion of Jímútaváhana. Gems and the like given by her husband, or which have devolved on her from him in default of male issue, a woman may give away at pleasure: both sorts of immoveable property which had belonged to her husband she must not give away, but she may enjoy it under the text which declares property common to the married pair; all effects belonging to her husband, which she has received,

received, ſhe muſt preſerve with frugality as long as he lives; ſuch is the opinion of CHANDÉSWARA and the reſt. Theſe opinions ſhould be reviewed by the wiſe.

What is acquired by the wife during the ſtate of deprivation of her huſband, is alſo her peculiar property. How can it be ſo, ſince it is excluſive of the ſix ſorts? *The anſwer is*, authors do not acknowledge the *reſtrictive* enumeration of ſix kinds; and even though it were admitted, the difficulty would be removed by affirming, *that* this maxim *is true* of a woman who is herſelf ſole miſtreſs *of the wealth acquired*. Who has a right to that which is acquired by a woman before marriage? A daughter may be alſo comprehended in a text formerly cited (Book III, Chap. I, v. LII 1), becauſe the maſculine gender is not there uſed in a determinate ſenſe, or becauſe the particle "and" connects the terms with that which is unexpreſſed; or, laſtly, becauſe the term "*ſon*" is illuſtrative *of a general meaning*: her father has therefore property in the wealth acquired by her, as he has a claim to the ſon produced by her before marriage. Such is the method founded on the opinion of ancient authors. It ſhould be thoroughly examined by the wiſe.

But, according to JÍMÚTAVÁHANA, all wealth acquired by a woman is held by her as her excluſive property; as that which is gained by a married woman is ſubject to the controul of her lord, ſo is wealth acquired by an unmarried woman ſubject to the controul of her father, becauſe ſhe alſo belongs to her ſire: hence, though *ſubſequently* married, ſhe alone can enjoy or aliene ſuch wealth, with the aſſent of her father. But, after the death of her huſband, no perſon has dominion over a widow; her ſpiritual parent, that is, her father-in-law, or other guardian, merely ſupport her: hence ſhe has abſolute power over that which ſhe then acquires. This ſhould be held demonſtrated.

The legiſlator declares, that her huſband has no power to uſe or aliene the legal property of a woman (CCCCLXXV 4). On this ſubject DÉVALA propounds a ſpecial rule:

## CCCCLXXVIII.

DÉVALA:—Food and veſture, ornaments, perqui-

 ſites,

ſites, and wealth received by a woman *from a kinſman*, are her own property: ſhe may enjoy it herſelf; and her huſband has no right to it, except in extreme diſtreſs:

2. If he give it away on a falſe conſideration, or conſume it, he muſt repay the value to the woman, with intereſt, but he may uſe the property of his wife, to relieve a diſtreſſed ſon.

"Food and veſture;" funds appropriated to her ſupport. "Ornaments;" ornamental apparel. "Gain, or wealth received;" that which is obtained from kinſmen. "Perquiſites," wealth given to a damſel on aſking her in marriage.

The *Retnácara* and *Chintámeni.*

Both ſorts of perquiſites mentioned by CÁTYÁYANA, and other kinds *of excluſive property held by women*, muſt alſo be comprehended in the text: this *ſort* is mentioned by both commentators, to ſhow that this alſo is her perquiſite; other kinds of female property muſt be comprehended in the text, conſidering the terms of it as illuſtrative of a general meaning.

When a huſband, taking the property of his wife under pretence of ſome indiſpenſable duty or the like, gives it away on immoral conſiderations, or conſumes it, he muſt repay the value with intereſt: but the property of a woman may be taken without her aſſent, to relieve a diſtreſſed ſon. The *Retnácara.*

Conſequently, intereſt muſt be paid on the property of a woman, which is taken, after an amicable tranſaction, for the purpoſe of giving it away on immoral conſiderations: without the conſent of women, their property muſt not be aliened on ſuch conſiderations, nor conſumed; but that may be done to relieve a ſon. The *Chintámeni.*

"He may conſume it:" hence it is deduced, that, although it bear no intereſt, it need not be repaid. The ſubjoined text makes this evident:

## CCCCLXXIX.

YÁJNYAWALCYA:—If a huſband, in a famine, or

 for

for the performance of ſome indiſpenſable duty, or during extreme illneſs, or while a creditor keeps him confined, ſhould appropriate the wealth of his wife, he ſhall not, *while his diſtreſs laſts*, be compelled to reſtore it againſt his will.

For ſome duty which muſt indiſpenſably be performed. The wealth of his wife taken to obtain relief in extreme illneſs, which prevents the performance of a duty, need not be repaid to her.

The *Retnácara*.

"Preventing" is an epithet of illneſs: the meaning is, precluding the performance of a duty. Conſequently, the ſeparate wealth of his wife, taken by the huſband to accompliſh the performance of an indiſpenſable duty, which cannot otherwiſe be fulfilled, need not be repaid againſt his will.

The *Vivāda Chintámenì*.

Some lawyers add, what is taken in the diſtreſs of a ſon, even though it be not ſuch as to prevent *the performance of duties*, the huſband need not reſtore againſt his will; for the epithet "preventing" does not occur in the text of Dévala: that only which is taken to obtain relief from ſuch diſeaſe, afflicting any other than a ſon, which does impede *the performance of duties*, need not be repaid.

In the *Dípacalicá* the term is explained, while a creditor keeps him confined, preventing his eating and ſo forth. It is ſuppoſed in the *Dípacalica*, that extreme illneſs is here denoted by the word diſeaſe. Conſidering this phraſe as illuſtrative of a general meaning, Chandéswara holds, that confinement by a creditor is comprehended *in the text*: conſequently, the purport of both commentaries is the ſame. In fact, whenever the performance of duties is impeded, a huſband need not reſtore the wealth of his wife then taken on failure of other means of relief. Since the word "huſband" is here exhibited, this rule relates to him alone, and to no other perſon. This ſhould be held demonſtrated. Jímútaváhana further obſerves, a huſband, unable to ſubſiſt in a famine or the like without uſing the property of his wife, may then, but at no other time, appropriate her wealth.

"And if any of them ſhall conſume ſuch property, &c."

 (CCCCLXXV 5);

(CCCCLXXV 5); any one of them, her husband, her son, or any of the rest: their punishment should, according to circumstances, consist in harsh reproof or the like. But MENU directs that others shall suffer the punishment of a thief.

## CCCCLXXX.

MENU:—Whether barren, or deprived of their sons, or destitute of kindred, the care of faithful wives must be the same, and of women whose husbands are absent, or who suffer distress:

2. On those men, whether kinsmen or others, who seize the property of such women while they live, a virtuous king must inflict the punishment of a robber.

"Barren;" sterile: consequently, barren women; those who have lost their sons, and have no kinsmen on the father's, mother's, or husband's side: and married women, who are faithful to their lords, must be so protected; that is, must be cherished like infants: and so must women whose husbands are absent, or who have been forsaken by them without just cause. On those men who seize their property by force or fraud while they live, a virtuous king must inflict the punishment of a robber. Such is the exposition approved by CULLÚCABHATTA. "Kinsmen" is an expression merely illustrative, which must be extended to others also.

"But, if he consume it with her assent, he shall pay the principal only, when he has wealth enough to restore it" (CCCCLXXV 6): there is consequently no harm if he do not repay the loan while he remains indigent. Accordingly, a text denying interest on the property of a woman has been cited in the book on Loans and Payment (Book I, v. LXXII): and this return of the principal only must be understood in a case different from the relief of a distressed son, and in the instance of a gift on immoral considerations with *the* assent *of the woman*. By thus directing the restoration of such wealth with interest *in certain cases*, the supposition that

that the husband has a title in the sole property of his wife, as she has in the sole property of her husband, but that she has a further independent power over that which is called her exclusive wealth, is thus contradicted, by directing the restoration of her property with interest *in certain cases;* for wealth which also belonged to her own lord, could not become a loan *to him.*

"Whatever she has put amicably into the hands of her husband, afflicted by disease, suffering distress or calamity, &c." (CCCCLXXV 7): consequently, as his wife, seeing his distress, *voluntarily* gave her own property, so should her husband also repay it of his own accord, without a demand. Accordingly it is observed in the *Retnácara,* her husband and the rest should voluntarily repay it. The sense of the text is this: her own property, which has been lent by a woman, seeing her husband or kinsman afflicted by disease or the like, he should voluntarily repay: so the *Chintámeni.* Consequently, say some lawyers, this disease is not such an extreme illness as impedes the performance of duties, nor does the creditor obstruct the performance of them: the text does not therefore contradict YÁJNYAWALCYA. That is wrong; for it contradicts the maxim, "a distinct import is inadmissible when coincidence is possible." Thus the sense is; he shall repay it by his own free will, not against his consent: the same is declared by YÁJNYAWALCYA, "he shall not be compelled to restore it against his will." This also is meant in the *Retnácara* and *Chintámeni.*

## CCCCLXXXI.

CÁTYÁYANA:—Yet more; if he have taken a second wife, and no longer give his first wife the honour due to her, the king shall compel him, even by violence, to restore her property, though it was put amicably into his hands.

2. If suitable food, apparel, and habitation, cease to be provided for a wife, she may by force take her own property, and a just allotment *for such a provision;* or she may, *if he die,* take it from his heir:

 3. This

3. This is a law of LIC'HITA; but after receiving *her own property and just allotment*, she must reside with the family of her husband; yet, if afflicted by disease, and in danger of her life, she may go to her *own* kindred.

If she have given her own wealth to relieve him in sickness or the like, or have amicably bestowed it in a season of calamity, and afterwards her husband, cohabiting with any other wife at pleasure, does not give her due honour in season or out of season; or if he do not give her food and apparel: in either case, she may by force take back her own property, though given when she saw her husband afflicted by disease or the like, and may take the allotment to which she is specially entitled. Consequently, she may also take from his heir, that is, from the brother or other near kinsman of the proprietor, the food, apparel, and the like, which ought to be received by her in that secular order.

This must be affirmed to be an ordinance of the legislator LIC'HITA; or this is a law of the written *(lic'hita)* code. But, after receiving this property, she must live with the family of her husband, and not go elsewhere inflamed with anger; for she ought to reside with her husband's family only. If sickness supervene, she ought to take remedies there only; but if a violent distemper occur, by which the loss of life becomes probable, and her husband does not provide suitable remedies, she may go to the family of her kinsmen, that is, to her father's family. The text is so expounded by VÁCHESPATI MISRA, following CHANDÉSWARA.

If a husband, although wealth have been amicably given by his wife, do not show her due honour, the king shall compel him, by force, to restore her property: such is the sense of the first verse. If he do not supply his wife with food and apparel, the king shall compel him to give her a just allotment for food, raiment, habitation, and the like, out of his own property: such is the sense of the second verse. This remark of SRÍ CRĬSHNA TERCÁLANCÁRA, commenting on the treatise of JÍMÚTAVÁHANA, is also accurate. But others consider this text (CCCCLXXXI 2) as relating to widows; consequently, if brothers-in-law and the rest

reſt do not give ſuitable food and apparel to the widow of their brother, ſhe may claim her juſt allotment from her huſband's brethren. The aſſignment of a ſhare conſiſts of a proviſion for food and clothes: hence the appoſiteneſs of *certain* texts, which declare the *widow's* right of ſucceſſion to the eſtate of him who leaves no ſon, *and of other precepts*, which ordain partition, and which allot a mere maintenance, is obvious.

VYÁSA declares how much wealth ought to be given by a huſband to his wife:

## CCCCLXXXII.

VYÁSA:—A portion amounting to two in the thouſand out of the whole eſtate ſhould be given to a woman; that, and whatever wealth is beſtowed on her by her huſband, ſhe may uſe as ſhe pleaſes.

The word "huſband" occurring in the laſt hemiſtich, the ſame term is preſented in anſwer to the queſtion ariſing on the firſt, "by whom ſhould that portion be given?" JÍMÚTAVÁHANA.

Hence, after the death of a brother, the ſurviving coheirs, having given two thouſand *panas, or two* panas in the thouſand *(for the term is explained in both ſenſes)*, may divide the reſidue among themſelves: ſuch is the meaning of the firſt hemiſtich. Lawyers who affirm, as the import of the laſt, that a woman has independent power over wealth given by an affectionate huſband, even though it be the whole of his property, are *thus* contradicted; for, were ſuch an import eſtabliſhed, it would be an unprecedented expoſition; for the word portion or heritage *(dāya)*, taken in its derivative ſenſe, ſignifies only wealth in general. More may therefore be given by any other perſon. If more than two thouſand *panas*, or two in the thouſand, be given, does that allotment legally become the excluſive property of the woman? CHANDÉSWARA conſiders it as invalid: for he has cited the text of VYÁSA, with this obſervation premiſed, "the legiſlator ſhows how much wealth may be given by her huſband, over which a woman ſhall have excluſive dominion." The ſame *commentator* remarks, ſince the text limits *the donation* to the ſum of two thou-



ſand

ſand *panas*, it follows, that, if the eſtate be ſmall, a leſs ſum ſhould be given. In this term "*dwiſahaſra*," the ſuffix of etymology has been rejected after the numeral appoſition: *panas* muſt be commonly underſtood when the number is mentioned; but the ſpecies or thing to be numbered is not particulariſed. But JÍMÚTAVÁHANA ſays, more ſhould not be given: the prohibition of giving *more* is deduced from reaſon and from the letter of the text. It is not here ſuppoſed that the donation can be void. In both opinions, there is a contradiction to common ſenſe; for two thouſand *panas* muſt be given by him who poſſeſſes a hundred millions of things *bearing a certain value*, and by him who poſſeſſes a hundred things *of the ſame denomination*. Some lawyers reconcile this difficulty by ſaying, arguments drawn from common ſenſe have leſs force than poſitive law. Others ſay, that of which two are given is expreſſed by the word two *(dwi)*, ſome term being underſtood, or the ſuffix of etymology being rejected. The ſenſe of the term "*dwiſahaſra*" is deduced from this appoſition; ſuch *two* thouſand, of which *one is given*; or elſe, that of which one thouſand is the cauſe of giving two: it is an epithet of heritage or property *(dáya)*. Conſequently, two in the thouſand muſt be given out of the property; ſuch is the limit of donation: or elſe, one part out of two thouſand *muſt be given*, that is, one in two thouſand. Thus there is no trouble in explaining the terms; and the ſenſe being completed by the word thouſand, the ſuffix *a* ſhould be admitted.

CHANDESWARA, reflecting on this contradiction to common ſenſe, has inſerted another interpretation: 'lawyers conſider this text as relating to joint property;' becauſe a text ordains, "what a man has himſelf acquired may be aliened at his pleaſure." Thus, ſince it appears that a man may aliene at pleaſure what he has himſelf gained, there can be no precept reſtricting donation to two thouſand *panas*, for the purpoſe of conferring excluſive property on a woman: and thus, although it be the opinion of CHANDÉSWARA and the reſt, that joint property may not be given away by an undivided parcener, ſtill the gift of a trifle, through favour, to a wife, a ſon, and the like, is authoriſed: a greater ſum is excepted; and more being given, the donation is void. Such is the whole import of that interpretation.

But the author of the *Pracáſa* ſays, more than two thouſand

*panas*

*panas* muſt not be given to the wife of lepers and the reſt, entitled to food and apparel only, and reſiding apart on food ſeparately prepared.

In this caſe, ſince the maintenance is not regulated, the limitation of a ſum would be irrelevant; it ſeems therefore that this allotment is given by the brothers or other kinſmen of their huſbands, *to be held by thoſe women* as their excluſive property. But the allotment for ſuch women reſiding with the family and partaking of the ſame food is not limited; for due honour ſhould be ſhown to them, as well as to the wives of other coheirs. Since theſe three opinions, being contradictory, cannot all be followed in practice, the opinion of the author of the *Pracáśa* ſhould be adopted, becauſe it is *the moſt* ancient: other opinions have been here inſerted for the ſake of elucidating this, and of thereby obviating the objection which modern authors have ſet up againſt it.

If the father die after promiſing to give, as excluſive property, ſuch a ſum as may be *legally* beſtowed on his wife, CATYÁYANA ordains, *that it ſhall be delivered by his ſons.*

## CCCCLXXXIII.

CÁTYÁYANA:—What has been promiſed to a woman by her huſband, as her excluſive property, muſt be delivered by his ſons, provided ſhe remain with the family of her huſband; but not if ſhe live in the family of her father.

Conſequently, there is no harm in not delivering to a woman who reſides, of her own authority, with the family of her father, what has been promiſed to her as her excluſive property.

## CCCCLXXXIV.

CÁTYÁYANA:—But a wife who does malicious acts injurious to her huſband, who has no ſenſe of ſhame, who deſtroys his effects, or who takes delight

light in being faithleſs to his bed, is held unworthy of the property before deſcribed.

Kinſmen, reſuming the excluſive property of ſuch a woman, may take it to themſelves. The *Vivâda Chintámeni.*

"Acts injurious to her huſband;" the adminiſtering of poiſon or the like. "Who has no ſenſe of ſhame;" who goes to other towns on falſe pretences or the like. "Who deſtroys his effects;" who incurs expences for immoral purpoſes.

Wealth was conferred for the purpoſe of defraying ſacrifices; therefore diſtribute wealth among honeſt perſons, not among women, ignorant men, or ſuch as neglect their duties.

This text is cited by JÍMÚTAVÁHANA and the reſt, under the title of Succeſſion to the eſtate of him who leaves no male iſſue (CCCCXIII): it is likewiſe inſerted by CHANDÉSWARA in this place. Conſequently, "diſtribute" here poſitively intends donation, and the taking of an inheritance. The diſtributer is the king, or any other perſon. Or the denial of donation, and of ſucceſſion to an inheritance, *are meant;* the one expreſſed, the other implied by parity of reaſoning. But let him not diſtribute it among women, ignorant men, or thoſe who neglect their duties: ſuch is the conſtruction of the ſentence. Conſequently, peculiar property ſhould not be given to a woman ſolely by the will of the donor, but ſhould be conferred with due attention to her good qualities and the like, and in proportion to her wants.

[stamp]

## Sect. II.—*On Succession to the Exclusive Property of a Woman.*

### Art. I.—*On the Succeſſion of her Iſſue Male and Female.*

Sons and daughters ſhall jointly ſucceed to ſuch property left by their mother, under the text of Menu (IV). He himſelf makes that evident:

### CCCCLXXXV.

Menu:—On the death of the mother, let all the uterine brothers and the uterine ſiſters, *if unmarried,* equally divide the maternal eſtate: *each married ſiſter ſhall have a fourth part of a brother's allotment.*

The text of Náreda (CCCCLXI) will be referred to wealth received on account of marriage. It ſhould be underſtood that debts muſt of courſe be paid; for the ſucceſſion is ſimilar to the inheritance of the paternal eſtate; and a daughter is alſo conſidered as an heir.

### CCCCLXXXVI.

Yájnyawalcya:—Let the ſons, after the death of their parents, equally ſhare the aſſets, and equally pay the debts of the deceaſed: what remains of a mother's fortune, after payment of her debts, her daughters inherit; if there be no daughters, their iſſue.

The words "ſons ſhall divide," and "after death," are repeated from the firſt hemiſtich; conſequently, after the death of their

their mother, sons and daughters shall divide her fortune: such is the construction of the phrase. But, according to ancient authors, "after the death of their parents" must be repeated in the second hemistich; for a son, not being his own master while his father lives, cannot regularly divide that fortune. The same likewise is nearly deduced from the interpretation of JÍMÚTAVÁHANA and the rest.

Or unmarried daughters only shall take an equal share with a son, not a married daughter.

## CCCCLXXXVII.

VRĬHASPATI:—The property of a married woman goes to her sons; but her daughter, if unmarried, has an equal share of it; if she be married, she inherits not, *in that case*, the wealth of her mother.

The term "offspring" here relates to her sons.

CHANDÉSWARA, JÍMÚTAVÁHANA, and the rest.

## CCCCLXXXVIII.

SANC'HA and LIC'HITA:—All uterine brothers and virgin sisters are entitled to equal shares of *the* wealth *left by their mother.*

## CCCCLXXXIX.

DÉVALA:—A married woman being deceased, her property goes to her son and *unmarried* daughter, as parceners: if she leave no issue, let her husband take it, her mother, her brother, or her father.

## CCCCXC.

GÓTAMA:—A woman's estate goes to her daughter not

not betrothed, *then* betrothed only, *or laſtly married.*

On this text of Gótama, and taking the literal ſenſe of the precepts of Náreda and Yájnyawalcya, daughters ſucceed firſt to the ſeparate property of a woman; on failure of them, a ſon: but that is contradicted by Menu, Vrĭhaspati, and Dévala; for they expreſsly declare the equal title of the ſon and daughter. Thus, a ſon ſucceeds to the ſeparate eſtate of his deceaſed mother, but an unmarried daughter has an equal title with him; on failure of either of them, the other inherits *the whole:* in default of daughters not affianced, one who is verbally betrothed ſhall inherit; for ſhe is ſeparately mentioned by Gótama.

Chandéswara.

Misra, Chandéswara, and Cullúcabhatta, read the laſt meaſure in the text of Vrĭhaspati, "ſhe receives a trifle as a mark of reſpect" *(labhatē māna mātracam).* Hence, from the concurrent import of the text of Vrĭhaspati, that of Menu likewiſe is thus expounded by Chandéswara: 'unmarried ſiſters only have equal ſhares with their brothers; but to married ſiſters ſome trifle muſt be given as a mark of reſpect, in proportion to the eſtate.' Misra concurs in that opinion. But Cullúcabhatta ſays, out of the maternal eſtate the fourth part of a ſhare ſhall be given to married ſiſters, as a quarter of a ſhare is allotted to unmarried ſiſters out of the paternal eſtate. Jímútavahana reads, "ſhe ſhall not inherit the wealth of her mother" *(na labhēn mātrĭcam dhanam);* and adds, on failure either of a ſon or of an unmarried daughter, the other inherits the whole; in default of both, the claim of married daughters who have or may have ſons is equal.

What proof is there that a married daughter ſhall in this caſe inherit the ſeparate eſtate of her mother; for ſiſter, daughter, and other terms in the texts of Menu and the reſt, relate to unmarried daughters only? Lawyers thus reconcile the ſeeming difficulty: the word iſſue occurring in the text of Dévala, and a married daughter being iſſue of her mother, both ſhe who has and ſhe who may have a ſon are entitled to inherit. Then a barren or widowed daughter ſhould alſo ſucceed? They do not inherit, becauſe they cannot confer a benefit on their mother; but ſhe

who

who has, or may have, male iſſue, can confer a benefit by means of her ſon. So JÍMÚTAVÁHANA.

But ſome lawyers hold, that, on failure of unmarried daughters, a married one ſhall have an equal ſhare with a ſon; for no diſtinction in reſpect of daughters is mentioned in the texts of MENU, NÁREDA, YÁJNYAWALCYA, and VAŚISHT'HA: but the text of VRĬHASPATI relates to the caſe where an unmarried daughter exiſts: and even on the text of GÓTAMA, as there is an order of ſucceſſion to the paternal eſtate, ſo there is in the preſent inſtance; but with this diſtinction, that a ſon and daughter jointly ſucceed. That opinion ſhould be rejected, being unnoticed by eſteemed authors.

SRÍ CRĬSHNA TERCÁLANCÁRA and others hold, that unmarried daughters, whether verbally betrothed or not, ſhall at the ſame time take equal ſhares. Does it not appear, from the ſeparate mention of them in the text of GÓTAMA, that their title is ſucceſſive? To this we reply, ſince it is acknowledged that *the ſucceſſion of* a daughter who has been betrothed is barred by *the claim of* one who has not been affianced, both cannot have an equal right to inherit with their brother: one who has an equal title with the preferable heir, cannot be reduced to an equal ſucceſſion with one who would have been excluded *by that heir;* for ſtronger and weaker claims cannot, in the ſame circumſtances, be equal. But, as a ſon, who would be debarred by the exiſtence of his own father, has an equal claim to the patrimony with his paternal uncle, who had an equal right with his father, ſo likewiſe, in the preſent inſtance, *a betrothed daughter, who would have been debarred by a daughter not betrothed, has an equal title with a ſon who had an equal title with the daughter who was not betrothed.* As for the argument, that a ſon's ſon, whoſe own father is dead, confers benefits by the oblation of ſingle and double ſets of funeral cakes, but not while his own father is living; this conſequently, not the intervening right of his father, is the cauſe why he does not receive the heritage: that is futile, for the great-grandſon, whoſe own father is dead, muſt neceſſarily be debarred by his paternal grandfather. Therefore, as it is not admitted that paternal uncles and the reſt *on the one part,* and a brother, his ſon, or grandſon, *on the other,* debar or are debarred by each other, ſo likewiſe it is not admitted that a ſon *on the one part,* and a daughter not actually married

married *on the other,* debar or are debarred by each other. But this and other inferences are not admitted by RAGHUNANDANA and the reſt.

The text of GÓTAMA relates to property received at the time of the nuptial ceremony. So,

## CCCCXCI.

MENU and the *Mahábhárata*:—That which was given to her mother at the time of her marriage ſhall become the ſhare of the virgin daughter alone.

The daughter not verbally betrothed, whom the legiſlator calls a virgin daughter, ſhall take the property which was given on the bridal proceſſion of her mother. To the queſtion, who ſucceeds in her default? the anſwer is, a daughter only betrothed, as ordained by GÓTAMA; but, on failure of her, the married daughter, who has or may have a ſon; as ſuggeſted by the text of VAŚISHT'HA.

## CCCCXCII.

VAŚISHT'HA:—The paraphernalia of the mother her female iſſue ſhall inherit in equal ſhares.

On failure of ſuch a married daughter, a ſon ſucceeds; in default of him, a barren or a widowed daughter, for they alſo are iſſue of the mother. Such is the opinion of JÍMÚTAVÁHANA.

The opinion of CHANDÉSWARA ſhould be here followed. But as for the explanation of the word *apratiſh't'hitá**, propoſed by MISRA and CHANDÉSWARA, (one whoſe huſband is indigent, and who is unfortunate,) it has been cenſured by JÍMÚTAVÁHANA and the reſt, becauſe there are no grounds direct nor argumentative for ſuch an expoſition. As for the word paraphernalia *(párináyya)* in the text of VAŚISHT'HA, which is expounded by MISRA and CHANDÉSWARA, 'female apparel, mirrors, bracelets,

* Tranſlated "betrothed only."

bracelets and the like,' that explanation might be admitted, if it did not contradict the rule for expounding phrases of scripture and of law in a literal sense: but it is improper to interpret the words of scripture and of law in a secondary sense, or by construction with remote terms, by repetition and the like; for otherwise, words becoming *similar to* the milch cow which gratifies every wish, all words would be presented in all senses, and there would be no certainty of the meaning. The same remark should also be extended to other *parts of the sentence*, lest the term "woman" *(interpreted female issue)* be taken in various senses by an *implied* repetition, under the rule, *that the plural number* is an abridged form *of the single term thrice or oftner repeated*. Consequently, admitting no distinction of daughters unmarried or married, they *all* have an equal claim to the female apparel and the like. Thus some lawyers. But that is wrong; for, in the gloss on the text of YÁJNYAWALCYA, the same rule is applied to wealth given on her marriage, and to the paraphernalia *of a married woman*. Consequently this term has been expounded as signifying female apparel and the like, on the consideration that the word was so used by ancient authors.

The right of the daughter in preference to the son is founded on the mention of daughters in the text of YÁJNYAWALCYA (DI). It should not be argued, that this word relates to unmarried daughters: to the question who shall inherit on failure of them, there would be no certain answer.

Like other separate property left by a married woman, a daughter inherits this also on failure of sons. It should not be argued, 'be the law as it may in other cases, still the son, as 'issue of the mother, has, in this instance, a right of inheritance 'on failure of a daughter, *not in preference to her*, for the term '"her" or their, in the text of NÁREDA (CCCCLXI), intends 'the mother.' Even in that case the difficulty is removed by referring the word daughter to the unmarried one, upon the coincidence of the text of MENU; and the word "her *or their*" may intend the married daughter immediately presented *by the order of the sentence*. Connecting the word "daughter," which signifies female offspring of the mother, with "issue," signifying progeny, the sense exhibited is "issue of the daughter:" the supposed objection, that a person or thing cannot be *spoken of*, at the

the ſame time, *as* effect and *as* cauſe, is thus obviated. If the word "iſſue" implied ſon of the mother, the word "her" or "their" would be unmeaning; for, without that term, the word mother is already preſented in the phraſe "daughters *ſhare the wealth* of their mother."

It ſhould not be objected, that the ſucceſſion of the daughter in preference to the ſon is ſuggeſted by the text of YÁJNYAWALCYA (CCCCLXXXVI); becauſe, the word "her" or "their" not being found in that text, the meaning muſt be 'iſſue of the mother.' Since there is no argument to prove the reſtriction of that text to wealth received at the time of marriage, it has been already expounded as relating to the eſtate of a married woman in general; and the word "iſſue" always requiring the reference to a parent, it ſhould be joined in conſtruction with the neareſt term "daughter." It ſhould not be objected, that, in anſwer to the queſtion ariſing on this interpretation of the phraſe, "if there be no female offspring, then male iſſue," the mother is moſt naturally preſented, being already placed in conſtruction as the parent. Leſt another text (DI) become a vain repetition, this precept muſt be explained as relating to other property of a woman, except that which ſhe received at her marriage: it is therefore improper to affirm that the ſon ſucceeds on failure of daughters, and the interpretation therefore is not ſimple. Conſequently the terms ought only to be underſtood in this ſenſe, "iſſue produced by them."

Again: this text does not relate to wealth received at the time of marriage; it is therefore confirmed that no proof exiſts of the right of a married daughter to inherit, in preference to a ſon, wealth received *by her mother* at the time of marriage. To this it is anſwered, the joint right of all daughters being deduced from the text of YÁJNYAWALCYA, becauſe that attributes a right to daughters as ſuch, the order of ſucceſſion, propounded by MENU and GÓTAMA, is not ordained by YÁJNYAWALCYA; *but* the word "daughter" intends ſecondarily an unmarried one. Hence all daughters firſt inherit ſucceſſively; on failure of them, the ſon has a demonſtrated title.

The general right of daughters and ſons to take equal ſhares being deduced from the text of MENU, and from that of YÁJNYAWALCYA, above cited, the order of ſucceſſion is only ſuggeſted by

by the text of VRIHASPATI: does it not follow, therefore, that a ſon and a married daughter have an equal title to the eſtate of a woman other than wealth received at her marriage? It ſhould not be objected, that the equal participation of one who was debarred, with one by whom he was debarred, is contrary to common ſenſe. It has been already ſtated, that this muſt be admitted in the caſe of wealth inherited from anceſtors: in the inſtance of a title deduced from reaſoning, argument, which juſtifies the equal claim of one by whom another is debarred, cannot indeed juſtify the equal claim of one who was debarred by him; but in a caſe expreſsly ordained by law it is otherwiſe. Thus, ſince reaſoning is not in this caſe adduced to prove the equal title of the ſon and of the daughter, their equal claims muſt be affirmed to be ſolely deduced from expreſs law; and if the equal title of one who was debarred, and of one by whom he was debarred, have been propounded in expreſs texts of law, then only can it be admitted.

To the queſtion thus propoſed the anſwer is, No; for the excluſion of the married daughter, if there be a ſon and an unmarried daughter, is ſuggeſted in a portion of a text above cited (CCCCLXXXVII), as read by CHANDÉSWARA; and it has been already eſtabliſhed by inveſtigation, that a married daughter inherits only on failure of both, ſince there is no ground for ſelection.

## CCCCXCIII.

CÁTYÁYANA:—On failure of daughters, that eſtate *of a married woman* ſhall deſcend to her ſon; but, in default of her parents and brothers, what ſhe received from her kinſmen devolves on her huſband:

2. Married ſiſters ſhall ſhare with kinſmen: this law, concerning the ſeparate property of a woman, is ordained in the caſe of partition.

Conſequently, ſince there is no proof that the word "daughter," which occurs in the texts of many legiſlators, muſt be taken in a

ſecondary ſenſe; and ſince the order of ſucceſſion is delivered in the plural number, it muſt be conſidered as demonſtrated that ſons ſucceed on failure of all daughters. On the opinion of RAGHUNANDANA and the reſt, this becomes an eaſy inference; for they do not admit that the perſon who was debarred, and the heir by whom he was debarred, can participate equally.

## CCCCXCIV.

VISHNU, after premiſing "forms of marriage:"—In all forms of the *nuptial* ceremony, the eſtate of women who leave iſſue deſcends to their daughters.

## CCCCXCV.

MENU:—If a widow, *whoſe huſband had other wives of different claſſes,* ſhall have received wealth at any time *as a gift* from her father, *and ſhall die without iſſue,* it ſhall go to the daughter of the *Bráhmaní* wife, or to the iſſue of that daughter.

JÍMUTAVÁHANA infers, from the ſpecial mention of "wealth received from her father," that property given by her father, at any other time but that of the nuptial ceremony, ſhall go to the daughter: the word *Bráhmaní* is a *mere* repetition. Conſequently, ſince the term *Bráhmaní* merely ſuggeſts lawful *marriage*, wealth given by their fathers to women of any claſs ſhall deſcend to their daughters, not to their ſons while a daughter is living. Diſapproving the *vain* repetition ſuppoſed in this interpretation, he ſubjoins another explanation; 'or, leſt the word *Bráhmaní* ſhould become a *vain* repetition, the text may be explained as ſignifying, that the daughter of the *Bráhmaní* wife ſhall take the wealth which the *Cſhatriyá* or other wives, leaving no iſſue, had received from their fathers: the ſeparate property of a woman who leaves no iſſue does not devolve on her huſband. Thus the whole text is well interpreted.' CHANDÉSWARA and CULLÚCABHATTA adopt this explanation. It ſhould not be

 argued,

argued, that the text does not ordain the right of a daughter by another wife, but limits succession in favour of one born of a *Bráhmaní* woman in lawful wedlock. The words "received from her father" would be unmeaning; and many phrases must be taken in a secondary sense, if texts, expressed in general terms, must be referred to a limited import, in consequence of a distinction taken in regard to daughters. As for the notion that the text is intended to show the succession of the *Bráhmaní* daughter to wealth given by a father or other kinsman on any other occasion but the nuptial ceremony, that also is not approved by authors; for there would be a disparity in the repetition of laws concerning presents given at the nuptial ceremony, and those which are bestowed on other occasions.

It should be here remarked, that, although daughters by other wives of various classes be living, the *Bráhmaní* daughter by another woman succeeds to the wealth which had been at any time given by their fathers to the *Cshatriyá* and other wives who leave no issue. In like manner, since a daughter by another wife is found to have a prevailing claim to wealth given by a father in preference even to a son by another wife, a married woman's own daughter must also have a prevailing title in preference to that woman's son: a daughter should therefore inherit, although a son exist. It is accordingly said in the *Retnácara*, the paraphernalia of a married woman, presents given on her marriage, and wealth given to her by her father, descend to the son, on failure of daughters. The gloss of MISRA contains an exception; whatever has been given by any other person but her father, goes to her brothers and sisters. This has not been noticed by JÍMÚTAVÁHANA, RAGHUNANDANA, and the rest; and no obvious authority is found, except the text of CÁTYÁYANA, containing the word "that" (CCCCXCIII). The author of the *Mitácshará* says, the term *Bráhmaní* intends wife of the highest class; consequently, on failure of the *Bráhmaní*, the daughter of the *Cshatriyá* wife shall take the wealth which a *Vais'yá*, who leaves no issue, had received from her own father. That is not admitted by SRÍ CRĬSHNA TERCÁLANCÁRA, because JÍMÚTAVÁHANA, not perceiving any authority for it, has not stated that opinion.

"Her issue" (CCCCXCV); the son of that daughter, that is,

is, the daughter's ſon of that other wife. "Wealth received from her father:" this is merely illuſtrative of every ſort of ſeparate property held by women; ſo the authors of the *Médhatit'hi* and *Pracáśa*, unſupported *by other commentators*. The opinion of CHANDÉSWARA and the reſt is not there contemplated.

Who is heir to the ſeparate property of a married woman, on failure of ſons and daughters? JÍMÚTAVÁHANA replies, the ſon's ſon is heir to the ſeparate property of a married woman, excepting preſents given at her marriage; for he confers benefits by offering the funeral cake in the double ſet of oblations. Why does not the ſon's ſon inherit in preference to the daughter? It ſhould not be anſwered, he does not inherit; becauſe there is no argument to eſtabliſh the ſucceſſion of a grandſon diſtant by an interval, ſince the text of NÁREDA declares the right of the daughter immediately after that of the ſon (CCCCXIX). Since that text is inſerted by JÍMÚTAVÁHANA under the title of Succeſſion to the eſtate of him who leaves no male iſſue, the word 'ſon' muſt neceſſarily ſignify male iſſue by males as far as the great-grandſon.

To the laſt queſtion propoſed the anſwer is, the ſucceſſion of a daughter to the ſeparate property of her mother is expreſsly ordained by law, not deduced from reaſoning. Were it inferred from argument, ſhe would have no right if a ſon exiſted. Hence it is improper to conteſt her right, which is ſuggeſted generally by her relation as daughter: it could only be reſiſted by the authority of a ſpecial text, if ſuch there were. But other lawyers hold, that a daughter is heireſs in the firſt place, ſolely becauſe ſhe ſprang from the body *of the mother*; elſe the right of the daughter would be ſubſequent even to that of a daughter's ſon. Neither has the daughter's ſon an equal claim with the ſon's ſon, nor yet a prior claim; for the ſon of a married daughter, who is *herſelf* debarred *by a ſon*, is excluded by the ſon of a ſon, by whom the daughter was debarred. But SRÍ CRĬSHNA TERCÁLANCÁRA, adopting this reaſoning, affirms the prior title of a daughter's ſon to inherit wealth given at the nuptial ceremony. This, therefore, is the deciſion: on failure of ſons, a daughter's ſon is, in the firſt place, heir to wealth given at the nuptials; in default of him, the ſon's ſon: but, to property which was not

 given

given at the marriage, the ſon's ſon is heir, on failure of married daughters; and in default of him, the daughter's ſon.

Some lawyers aſk, admitting the ſucceſſion of a daughter under the authority of the text, although ſhe confer no benefit *on her parents*, how can a daughter's ſon inherit?

## CCCCXCVI.

SÁTÁTAPA:—After the firſt annual obſequies by the *ſapindas*, whatever is given *at the monthly rites* to anceſtors *by the ſon of the deceaſed*, his mother has a ſhare of the benefit: this is a ſettled rule in all ſyſtems of religious and civil duties.

If it be argued, from this text of law cited by RAGHUNANDANA, that a daughter's ſon alſo confers benefits on his maternal grandmother, becauſe ſhe has a ſhare of the funeral cake offered to his maternal grandfather, ſince the word "anceſtors," (literally, fathers,) intends three paternal and three maternal forefathers, namely, the father and the reſt, and the maternal grandfather and ſo forth; and the word "mother" intends three female anceſtors aſcending from the mother, and three other female anceſtors aſcending from the maternal grandmother; *theſe lawyers reply*, the word "anceſtors" intending three perſons aſcending from the father, there are grounds for taking the word "mother" in the large ſenſe of mother, paternal grandmother, and paternal great-grandmother, namely, the coincidence of the text formerly cited (CCCCXXXII), and of the following precept:

## CCCCXCVII.

At obſequies on the day following the eighth lunar day in certain months*, at thoſe with a triple ſet of

* *Anwaſhtacá*; on the ninth lunar days of *Pauſha*, *Mágha*, and *P'hálguna*; and with ſome, in *'Aſwina* alſo. T.

of oblations, at *Gayá*, and at the anniversary obsequies, the son should separately perform a *s'rádd'ha* to his mother; in other cases he should perform obsequies to her with her lord.

For it is there shown, that, in other instances, the *s'rádd'ha* should be performed to those women with their lords, for whom it is separately performed by the followers of the *Yajurvéda* at the obsequies mentioned. But if this be taken as an indirect authority for considering the word "mother" as bearing the secondary sense of maternal grandmother, then she is in truth benefited by her daughter's son: yet SRÍ CRĬSHNA TERCÁLANCÁRA objects *to this*, the remark of A'CHÁRYA CHUD'ÁMAŃI, that the son of an uterine sister, and the son of a sister by a different mother, have an equal title to the estate of him who leaves no male issue *nor near heir*. They could not, say some lawyers, have an equal right of succession, if the maternal grandmother could be benefited by her daughter's son. That is futile; for the succession of the daughter's son is deduced from a text of VRĬHASPATI which will be cited; and he has, as issue of his grandmother, a legal right of succession under the text of MENU (XLII), before her husband there mentioned, but after her son's son; and the texts of NÁREDA and YÁJNYAWALCYA (CCCCLXI and CCCCLXXXVI) *suggest his succession.*

Admitting the succession of a daughter's son, but after the great-grandson in the male line, should he not also succeed to wealth given at the nuptials, after both the grandson and the great-grandson in the male line, *not before either of them?* No; the right of the daughter's son being ordained by texts of law, the further order of succession is established by reasoning; and that reasoning is here founded on proximity, and on the similar mutual exclusion of the remoter offspring of those who debar, and are debarred by each other. Then the son's son is not heir, because he is not mentioned in the text, and surely the son of that grandson *has no claim?* The right of the daughter's son being barred, this suggests the right of the son's son to wealth other than that which had been given at the nuptials; but a son's son, and the son of that grandson, shall succeed before the husband to

 wealth

wealth given at the marriage, becauſe they are iſſue of the woman. If the great-grandſon in the male line inherit in right only of his being iſſue of the woman, may not his ſon or remoter deſcendent alſo inherit? Both lineal deſcent and benefits conferred are cauſes of inheriting the ſeparate property of a woman; for the word "him" is not limited to the maſculine gender in the text of MENU, "even the ſon of a daughter delivers him in the next world, like the ſon of his ſon;" and that text muſt be conſidered as relating to the ſon of an appointed daughter, but not reſtrictively, that the verſe of the *Mahábhárata* (CV) may coincide with it. Since the rights of a ſon's ſon are attributed to a daughter's ſon, the ſon of a daughter inherits after the ſon of a ſon; but he is firſt heir to the wealth given at nuptials, becauſe, ſay lawyers, his mother is in this inſtance chiefly conſidered.

The daughter of a daughter is not heireſs with the ſon of a daughter, nor after him, nor before him; for no law ordains her ſucceſſion. As for the ſubjoined text of MENU, it ſhows that ſome trifle ſhall be given as a mark of reſpect by the ſon and by the daughter, not that a ſhare ſhall be received by the daughter of a daughter; for the text expreſſes "ſomething," *that is, ſome trifle;* and the expreſſion "ſhould be given," ſuggeſts the brother and ſiſter as the givers, which would be improper if ſhe had an equal right of inheritance with them.

## CCCCXCVIII.

MENU:—Even to the daughters of thoſe daughters it is fit that ſomething ſhould be given, from the aſſets of their maternal grandmother, in proportion to the allotments, on the ſcore of natural affection.

"In proportion to the allotments;" in proportion to the great or ſmall amount of the aſſets. The *Retnácara.*

But VÁCHESPÁTI BHATTACHÁRYA ſays, ſomething muſt be given to the daughter's daughter, whoſe own mother is dead; and that muſt be given by a married daughter, not by a ſon, nor by an unmarried daughter: but if the wealth were received at the

the nuptials, *ſomething muſt be allowed* even by a ſon; and that ſomething which is given ſhall be proportionate to the ſhare of her mother, as the ſon's ſon, whoſe own father is dead, receives a ſhare of the property left by his paternal grandfather. It is proper therefore to refer the word "thoſe" to the perſons who make the partition.

The comprehenſion of the married daughter in the text preceding this (CCCCLXXXV) is not univerſally admitted; for the unmarried daughter may be intended by the word "ſiſter." The ſucceſſion to the ſeparate property of a woman does not, like the inheritance of an eſtate left by a man, extend to the third in deſcent: this objection to that commentary ſhould alſo be examined.

VÁCHESPATI MISRA likewiſe affirms, that, on failure of daughters, the ſon and the daughter of a daughter inherit under the text of MENU. To this again it may be objected, ſay *ſome* lawyers, that, according to MISRA and CHANDÉSWARA, the ſon of a daughter ſucceeds, on failure of daughters, to the wealth given at nuptials, although a ſon exiſt, under the texts of NÁREDA and YÁJNYAWALCYA above cited. That is queſtionable; for the full import of the text of YÁJNYAWALCYA relates to other ſorts of property except wealth given at nuptials, ſince another precept of YÁJNYAWALCYA (CCCCLXXXVI) would be a vain repetition if this text related to wealth given at nuptials. The precept of NÁREDA alſo may bear the ſame import; for the word "ſons" in his text (CCCCLXI) may be brought *from the firſt hemiſtich into the laſt*: in both inſtances, it is more proper to carry forward the word ſons *into the ſecond hemiſtich*, than to attribute the limited ſenſe of wealth received at nuptials to the words "eſtate" and "aſſets," which denote property in general, and which are already carried forward *into the laſt hemiſtich of each text*; and the ſon of a daughter is inferior, in compariſon with the woman's own ſon.

JÍMÚTAVÁHANA, RAGHUNANDANA, and the reſt, affirm the right of the ſon to inherit wealth given at nuptials, in preference to the daughter's ſon. On failure of both grandſons, RAGHUNANDANA holds, that the great-grandſon in the male line *ſhall inherit*. JÍMÚTAVÁHANA admits the right of a great-grandſon in the male line. But that reading, in the treatiſe of RAGHUN-

ANDANA,

ANDANA, authors conſider as an error of the tranſcriber. This is not elegant; for it is wrong to ſuppoſe that JÍMÚTAVAHANA, who aſſerts the ſucceſſion of a daughter in right of the funeral cake offered by her ſon at the double ſet of oblations, ſhould not admit the ſucceſſion of a grandſon in the male line who does himſelf offer the funeral cake. Accordingly SRÍ CRĬSHNA TERCÁLANCÁRA, author of a commentary on his treatiſe, ſays, 'on failure of heirs as far as the daughter's ſon, ſucceſſion, extended to the great-grandſon in the male line, is ſuggeſted indirectly.' The right of a great-grandſon by males, on failure of grandſons in either line, is therefore demonſtrated. In default of him, barren or widowed daughters ſucceed; for they alſo are iſſue *of the woman*. So RAGHUNANDANA and JÍMÚTA VÁHANA.

But others hold, that theſe *female heirs* ſucceed merely as daughters; they were before debarred by perſons who confer benefits on *the female anceſtors*, but have now gained the opportunity *of aſſerting their claim*. Is not this inaccurate, ſince the ſon of a daughter confers no benefit *on his maternal grandmother?* If it be ſaid, benefiting her huſband and the reſt, he mediately confers benefits *on her*; it is anſwered, a married daughter would in that caſe ſucceed in preference to the ſon's ſon. To the queſtion thus propoſed the anſwer is, ſince a married daughter may confer benefits on the huſband of her mother by means of her ſon, ſhe, who thus affords ſome advantage, being at the ſame time "daughter," and "iſſue of the body" *of her mother*, cannot be debarred by thoſe who confer greater benefits; for the advantages afforded are not principally conſidered in treating of ſeparate property held by women. But barren and widowed daughters, conferring not the leaſt benefit, ought to inherit after the great-grandſon in the male line, but before the huſband, becauſe they are daughters, and ſprang from the body of their mother. Then, ſhould not theſe two inherit before the grandſons of a ſon, whether in the male or female line *of deſcent from him? It may be anſwered*, what ſhould prevent their ſucceſſion to this property, any more than to the eſtate of one who leaves no male iſſue?

But others again affirm, ſince there is no proof that the funeral cake offered at the double ſet of oblations ſhall be chiefly conſidered in the ſucceſſion to ſeparate property held by women, therefore

therefore the barren and widowed daughters who offer the anniversary cake may inherit before a daughter's son.

Why do not a son, a son's son, and the son of a grandson, jointly inherit the estate of a married woman, as they do the property left by a man? It should not be answered, they inherit jointly on the sole authority of a text of CÁTYÁYANA, which relates to the subject of succession to the property of a man (LXXIX); but it is not so in the present instance, because there is no such text. Although that might be alleged on the opinion of CHANDÉSWARA and others, it cannot be affirmed conformably with that of JÍMÚTAVÁHANA and the rest; *for* texts relative to the inheritance of property left by men (CCCCXCVIII, &c.) may be adduced under the title of Succession to the separate property of women. It should not be said, that is admissible; the son's son, whose own father is dead, may claim the estate of his paternal grandmother, as *he may* the property of his paternal grandfather; and thus the remark of JÍMÚTAVÁHANA, "a son's son inherits on failure of daughters," is intended to exclude a son's son whose own father is living. In saying "a son's son shall inherit on failure of daughters," what is the import of that term? If one whose father is living be meant, terms denoting the failure of daughters are superfluous; for a married daughter has no present claim, since the father of that grandson has the sole right of inheritance: if one whose father is dead be meant, why is the failure of daughters required, since he shares equally with an unmarried daughter? Thus neither would be apposite.

To this some reply, JÍMÚTAVÁHANA does not deduce the rule of succession to the estate of a woman, from a text relative to the inheritance of property left by a man; but on some occasions he cites a text concerning this subject, in a form of illustration, to confirm *the rule otherwise deduced:* thus, the same reasoning not being equally applicable to the property of a man, and to that of a woman, it is improper to deduce rules concerning the estate of a woman from texts relative to property left by a man.

Wealth given at the time of marriage (*yautuca*) has been mentioned, what is meant by that term? Know, that it signifies any thing received at the time of marriage. From the verb *yu* mix,

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is derived *yuta*, by adding the neuter ſuffix of abſtraction; it therefore preſents the ſenſe of mixture. Now, under the authority of the *Véda*, an union of bride and bridegroom takes place at the time of marriage; what is then received is called *yautaca*, reading the word, as JIMÚTAVÁHANA does, without the *u*: but a various reading with the letter *u* occurs in ſome inſtances; and that is regularly derived from *yutu*, which again is regularly deduced from the crude verb *yu*, by ſubjoining the ſuffix *tu*.

The forms of the nuptial ceremony are eight, diſtinguiſhing the marriages called *Bráhma*, *Daiva*, *'Arſha*, *Prájápatya*, *'Aſura*, *Gándharva*, *Rácſhaſa*, and *Paiſácha*: theſe are deſcribed by YÁJNYAWALCYA.

## CCCCXCIX.

YÁJNYAWALCYA:—In the *Bráhma* nuptials the damſel is given *by her father*, when he has decked her as elegantly as he can, to the bridegroom, whom he has invited; in the *Daiva*, to the prieſt employed in performing the ſacrifice; in the *'Arſha*, to the bridegroom, from whom he receives, *for religious purpoſes*, a bull and a cow:

2. When the father gives her to a ſuitor, ſaying, "perform all duties together," the marriage is named *Cáya* (or *Prájápatya)*; and a ſon produced by it confers purity on himſelf and on ſix deſcendents in a male line*:

3. An *'Aſura* marriage is contracted by receiving property from the bridegroom; a *Gándharva*, by reciprocal amorous agreement; a *Rácſhaſa*, by ſeizure in war; a *Paiſácha*, by deceiving the damſel.

4. The four firſt *are approved in the caſe* of a prieſt; the *Gándharva* and *Rácſhaſa* marriages *are* permitted

* I complete the citation, which is imperfect in the original. T.

mitted for a ſoldier; the 'A*ſura* ceremony *is peculiar* to mercantile and ſervile men; the *Paiſácha* marriage is reprobated for all.

They are called *Bráhma*, and ſo forth, to intimate praiſe or blame. 'This *firſt* ceremony is proper for *Bráhmanas* and the reſt, and therefore called *Bráhma*:' ſuch is the meaning ſuggeſted by the legiſlator.

When a damſel, decked with ornaments, is given *by her father* to the bridegroom, whom he has invited to his own houſe, it is a *Bráhma* marriage, or *ceremony of* Bráhmanas, the firſt form of the nuptial rites: that marriage in which the damſel is given to the family prieſt attending a ſacrifice at the time when the ſacrificial fee ſhould be given, is termed *Daiva*, or *the ceremony of* Dévas, the ſecond form: the gift of a damſel after having received from the bridegroom one pair of kine, *or* with *the delivery of* one pair of ſuch cattle, is named *Arſha, or the ceremony of* Rĭſhis, the third form: when a damſel is given to any perſon aſking her in marriage, with theſe words *pronounced by the giver*, "perform all duties together with her," it is denominated *Prájápatya*, or *the ceremony of* Prajápatis; another name for it is *Cáya*, derived from *Ca*, which ſignifies *Prájapati*, according to dictionaries; this is the fourth form: the gift of a daughter to a bridegroom, taking from him wealth other than a pair of kine, *merely* at his own choice, without any authority of law, is named '*Aſura*, or *ceremony of* Aſuras, the fifth form: when there is reciprocal connexion with mutual deſire, the marriage is called *Gándharva*, or *ceremony of* Gandharvas, the ſixth form: the ſeizure of a maiden after overcoming her father in battle, or the abduction of her by force *from her houſe*, is denominated *Rácſhaſa*, or *ceremony of* Racſhaſas, the ſeventh form: the ſeizure of a damſel by fraud, while ſleeping or intoxicated, is termed *Paiſácha*, or *ceremony of* Piſáchas, the eigthth form of nuptial rites. Of theſe modes, four, the *Bráhma*, *Daiva*, *Arſha*, and *Prájápatya*, are *legal* for a *Bráhmana*; the marriage ſtyled *Gándharva*, and the ſeizure of a maiden in war, are peculiar to the *Cſhatriya*; the '*Aſura* marriage is permitted for a *Vaiśya* and a '*Súdra*; the *Paiſácha*, forbidden to them, ſhould be practiſed by no perſon whomſoever. Such is the expoſition approved by 'SÚLAPÁNI.

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At preſent, the *Bráhma* nuptials only are practiſed by good men; but even the marriages called *Áſura, Gándharva, Rácſhaſa*, and the reſt, are ſometimes practiſed by others.

"Marriage" is a rite to be performed by the bridegroom, and which completes the regenerating ceremonies; ſince the act of receiving *the bride* effects it, the term has been alſo uſed *in this gloſs* as ſignifying the gift *of a maiden*. The nuptial rites are neceſſary even in the marriage named *Gândharva* and the reſt.

D.

DÉVALA:—Nuptial rites are ordained in the marriage ſtyled *Gándharva* and the reſt; to this contract the nuptial fire muſt be made witneſs by men of the three claſſes.

The ſecond marriage of a woman who had been already eſpouſed by another man, is called by AT'HARVAN, a regenerating ceremony: this marriage alſo falls under the deſcription of *Gándharva* rites.

Wealth received at the time of marriage in any one of ſuch eight forms, is denominated *Yautuca*. On this MISRA remarks, that wealth received at the time of marriage, in the form called *Bráhma* and the reſt, goes to the daughters.

## ART. II.—*On Succeſſion to the Separate Property of a Woman leaving no Iſſue.*

DI.

YÁJNYAWALCYA:—A married woman dying without iſſue, her property received at *Bráhma* nuptials, or even in other four unblameable forms of marriage, it goes to her huſband; if ſhe leave iſſue,

issue, it descends to her daughters; but, in other forms of the nuptial ceremony, her property then received goes to her father *and mother*.

" At *Bráhma* nuptials and the rest:" here, by a strange etymology, when connecting " four " with these terms, the apposition is in the form called *bahubríhi*, joining terms which have not the same attribute; the meaning is, other four forms of marriage besides the *Bráhma* ceremony, namely the *Daiva*, *'Arsha*, *Gándharva*, and *Prájápatya*. But, when connecting this part of the sentence with " property received," the apposition is in the form called *bahubríhi*, joining terms which have a common attribute; consequently, the meaning is, property received at those marriages, as well as at *Bráhma* nuptials. But some lawyers say, even though such an etymology be established, wealth received at those four specified marriages is not presented *by the terms of the phrase*; for, admitting the order propounded by YÁJNYAWALCYA himself, the *'Asura* ceremony is included in five forms of marriage counted from the *Bráhma* ceremony; and the *Gándharva* is excluded: the apposition therefore is in the form called *bahubríhi*, joining terms which have the same attribute; as in the expression " bring the long-eared *animal*," which denotes the bringing of one which has long ears, so, in the present instance likewise, the expression denotes " four marriages including the *Bráhma* ceremony: the apposition is not in the form called *bahubríhi*, joining terms which have not the same attribute, as in the example, " bring him who has the painted cow," and in other instances, where the sense really presented is, 'bring the owner of the painted cow,' not the cow also. Consequently, the meaning is, 'wealth received by a woman during the celebration of nuptial rites in the forms called *Bráhma*, *Daiva*, *Arsha*, and *Prájápatya*, her husband obtains, if she die without issue.' But this contradicts the precept of MENU; for the *Gándharva* marriage is also included in his text.

## DII.

MENU:—It is ordained, that the property of a woman

man married by the ceremonies called *Bráhma*, *Daiva*, *`Arsha*, *Gándharva*, and *Prájápatya*, shall go to the husband, if she die without issue.

To this alleged contradiction it is answered, the particle "even" connecting the terms with something understood but not expressed, the ceremony named *Gándharva* is also included: "other forms" are the *`Asura* rites and the rest, omitting the *Gándharva* marriage; for that is already included in the first hemistich by the words "or even." It goes to her "father;" the meaning is, it goes to her father and mother, the last term being understood: so,

## DIII.

Menu:—But her wealth given on the marriage called *`Asura*, or on either of the *two* others, is ordained, on her death without issue, to become the property of her father and mother.

## DIV.

Náreda:—The property of married women shall descend to their children; and legislators ordain, that, if women leave no issue, their property received at the marriage called *Bráhma*, or other four unblamed nuptials, shall go to their husbands; received at other marriages, it goes to their parents.

Here "four," *taken inclusively*, is not intended to except a fifth: hence, in the marriages called *Bráhma*, *Daiva*, *`Arsha*, *Gandharva*, and *Prájápatya*, the wealth of a married woman who leaves no issue goes, on her death, to her husband; in other forms of marriage, namely the *Rácshasa*, *`Asura*, and *Paisácha* nuptials, it goes to her father. This relates to wealth received by a woman at the time of her marriage. The *Retnácara*.

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"It is not intended to except a fifth:" consequently, wealth received at four of the nuptial ceremonies, necessarily goes to the husband; but, in the form of marriage which is different from those four, it devolves, in some instances, on the husband; in others, on another heir. In like manner, under the precept, "received at other marriages, it goes to their parents;" the wealth of married women received at certain other marriages, devolves on their parents, but not what has been obtained at nuptials different from those others; which implies an exception of other persons in those other forms of marriage.

In the marriage called *Rácshasa* and the rest, if the father, or other kinsman of the maiden, though at that time defeated in battle, (for such is the described form of this marriage,) yet following the practice of the *Daiva* ceremony, or of marriage in general, give a nuptial portion to his daughter, through natural affection or from other motives, then this rule is applicable to that case.

'Received by a woman at the time of her marriage:' the supposition that the husband succeeds to all the separate property of his wife married by one of the five ceremonies called *Bráhma* and so forth, at whatever time it may have been received by her, is thus confuted; for it is shown, that the father and mother only succeed to wealth received at the time of the marriage in the form called *`Asura* and the rest, since this coincides with the text of YAMA; and by parity of disproof it should be established, that a husband only succeeds to wealth received by *his wife* at the time of the marriage in the form called *Bráhma* and the rest. Accordingly, the accurate construction of the text of MENU is, "her wealth given on the marriage called *`Asura;*" and in the text immediately preceding (DII), the same construction should be followed by fetching the word "given" from the subsequent verse. Such is the opinion of JÍMÚTAVÁHANA and the rest.

## DV.

YAMA:—Wealth which is given on the marriage called *`Asura*, or on either of the *two* others, *goes to the parents of the woman.*

RAGHUNANDANA ſpecifies the time of marriage: ‘ the period of the nuptials is the ſpace from the beginning to the cloſe of the nuptial ceremony; it commences with the oblation for increaſe *of proſperity*, and ends with a return of the ſalutation:’ it is ſo expreſſed in the *Viváha tatwa*. Here the implied meaning is, from the firſt to the laſt member of the ceremony: hence, if the oblation for increaſe *of proſperity*, or any other part of the rites, be not performed, there is no objection.

But others ſay, “ marriage ” in the text above cited (DV) is expreſſed in the ſeventh caſe with a general or illuſtrative meaning; as in the phraſe “ he goes a-begging.” Conſequently, whatever is given to a damſel on account of her nuptials, is wealth given on her marriage *(yautaca)*; ſuch is the obvious ſenſe: and that alone ſhould be received by her huſband at a ſubſequent time. Accordingly, wealth given on the day of marriage, before the oblation for increaſe of proſperity, is a preſent given on her nuptials. Does it not follow, that wealth which a kinſman returning from a diſtant country, but unable to attend on the day of the ceremony, gives when four or even five days are elapſed ſince the nuptials, would be a preſent given on her marriage; but wealth previouſly demanded being delivered, on the very day of marriage, by a kinſman caſually uninformed of it after the oblation for increaſe of proſperity, would not be wealth given on her marriage; and her huſband would have no right to it *after her demiſe?* This is admiſſible; for the expreſſion of CHANDÉSWARA, “ received at the time of marriage,” may be taken in a lax ſenſe, as ſignifying a preſent given, by reaſon of her nuptials, on any other day whatſoever.

If a woman having no iſſue *male or female*, including daughter’s ſons, leave a huſband who has a ſon by another wife, which of them ſhall inherit her eſtate? RAGHUNANDANA replies, the ſon by another wife is firſt heir; on failure of him, the ſon of ſuch a ſon; in default of him again, the huſband and the reſt. The reaſon is, that her huſband and others do not offer a funeral cake, in which the late proprietreſs can participate: that is alſo noticed by the commentator; ‘ the ſon of another wife, and the ſon of ſuch a ſon, have both an equal claim, becauſe *others do* not offer, in the double ſet of oblations, a funeral cake which the proprietreſs may ſhare.’



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The ſuperior claim of the huſband and the reſt, in competition with his ſon by another wife, is thus denied; becauſe they do not offer, in the double ſet of oblations, a funeral cake, which the proprietreſs may ſhare: it is not thereby ſhown that the ſon of another wife has a ſuperior claim. And thus other reaſoning muſt be brought for the ſucceſſion of a ſon by another wife, in preference to the ſurviving huſband: ſuch, for example, as the following; ſince the ſon of any one wife is figuratively called, in a text of MENU, ſon of all the wives *of the ſame huſband*, his ſon ſhould alſo be figuratively termed grandſon of all the wives.

## DVI.

MENU:—*Thus*, if among all the wives of the ſame huſband, one bring forth a male child, MENU has declared them all, by means of that ſon, to be mothers of male iſſue.

It ſhould not be objected, that, were it ſo, a brother's ſon would alone inherit the property left by a man, although a daughter or her iſſue, and brothers and the reſt, were living; becauſe a nephew is figuratively called ſon *of all the brethren* in a text of MENU (CCLXXVI). It would be irregular to deduce the order of ſucceſſion from reaſoning, whilſt *another* order of ſucceſſion, expreſsly ordained by law, is found in the text of YÁJNYAWALCYA (CCCXCVIII); but, in this caſe, no other ſeries of claims having been expreſsly ordained to bar that which is deduced from reaſoning, this order of ſucceſſion, conſiſtent with the reaſon of the law, ſhould be affirmed.

To all this the anſwer is, No; for VRĬHASPATI, declaring that no deciſion ſhould be made inconſiſtent with the reaſon of the law, and the order propounded by YÁJNYAWALCYA being followed, reaſoning, founded on the figurative appellation of ſon, cannot eſtabliſh a right of ſucceſſion. Accordingly, even though the ſon of a ſiſter, and others alſo, be in effect figuratively named ſons, under the text of VRĬHASPATI (DXIII), ſtill the huſband and the reſt ſhall inherit in preference to them.

To this again lawyers reply, the ſon of another wife may ſucceed

ceed *to the estate of a woman*, although her husband survive, because he offers the funeral cake in the anniversary obsequies. In respect of separate property left by a woman, the benefit conferred by offering the funeral cake at anniversary obsequies, is a valid ground of inheritance; for women are not chiefly considered in the funeral cake which is offered with the double set of oblations: but in respect of property left by a man, the comparative claim of inheritance follows the comparative connexion of the funeral cake offered in the double set of oblations: it is therefore so established in this case.

Still, how can the grandson of another wife inherit the estate of a woman in preference to her husband? It should not be answered, RAGHUNANDANA only admits his claim after the husband's. That author declares the succession of the brother-in-law, on failure of sons and other heirs down to the husband. But this may be questioned; *for*, the right of a son, of a daughter's son, and the rest, is not declared to be founded on benefits conferred by the gift of the funeral cake in the double set of oblations; since the commentator does not consider a daughter's son and the rest as issue *of the maternal grandmother*, and no other special text is found: but a law concerning the succession of a son by another wife will be cited.

"It is ordained to become the property of her father and mother:" here also the mother is first heir, and the father next; for such is the order expressed in the text of MENU. There can be no association *of terms*, where the word "and" or other connective particle is wanting; for association cannot be introduced in *the midst of* successive order: the particle "or" in the text of DÉVALA (CCCCLXXXIX) suggests the denial of association; and that is shown in the single text of BAUDHÁYANA.

## DVII.

BAUDHÁYANA*: — Of an unmarried woman deceased, the brothers of the whole blood shall take the inheritance; on failure of them, it shall go to

* The text is, in other compilations, attributed to NA'REDA. T.

to the mother; or, if ſhe be not living, to the father.

'That again which has been received by a woman after marriage, from the family of her father, mother, or huſband, ſhall go to her brothers, as ordained by the following text:

## DVIII.

YÁJNYAWALCYA:—If a married woman die without iſſue, her neareſt paternal or maternal kinſmen inherit whatever her own family had given her, the perquiſites allowed by her huſband, and whatever ſhe received after marriage.

"Whatever her own family had given her;" what was beſtowed on her 'by her father and mother: their ſons, *meaning* her 'brothers, are the neareſt *kinſmen*, paternal or maternal, *who ſhall* '*inherit*, as ordained by CÁTYÁYANA.' JÍMÚTAVÁHANA.

## DIX.

*Vriddha* CÁTYÁYANA:—Whatever immoveable, *and of courſe whatever moveable*, nuptial property has been given by parents to their daughter, ſhall always go to her brother, if ſhe die without iſſue.

"Whatever ſhe received after marriage," from the family of her father, mother, or huſband, is called a gift ſubſequent. In like manner, the expreſſion "whatever her own family had given her," may ſuggeſt any thing beſtowed on her by her parents before marriage: however, it does not comprehend that which her brother gave her, or which ſhe herſelf acquired, before marriage: an heir being therefore ſought for ſuch property, her brother ſhould be conſidered as having the ſole right. Since it is mentioned in the ſame place, JÍMÚTAVÁHANA and the reſt muſt

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of courſe admit the right of her brother, on failure of her huſband, to inherit wealth acquired by a woman during coverture. Brothers alone ſhall take the perquiſites, both thoſe which are defined by VYÁSA, and thoſe which are explained by CÁTYÁYANA. So JÍMÚTAVÁHANA and RAGHUNANDANA; 'SÚLAPÁNI alſo holds the ſame opinion. But CHANDÉSWARA ſays, the perquiſite which was received when the damſel was given in marriage, is here determinately meant. He therefore conſiders the text of SANC'HA as relating to the caſe where the maiden dies immediately after receiving the nuptial preſent.

## DX.

SANC'HA, after premiſing "may take back:"—The lover *may take back* his nuptial preſent on the death of his betrothed miſtreſs.

JÍMÚTAVÁHANA does not concur in that opinion; for, ſuch a perquiſite or nuptial preſent being taken by her father, does not become the property of the woman. If it be ſaid, this text relates to that wealth only which is given excluſively to the maiden as a nuptial preſent on the bridal proceſſion; the anſwer is, there is no authority for ſuch an inference; and it would be difficult to find an heir for the perquiſites mentioned by VYÁSA and by CÁTYÁYANA. Again; it is ſuggeſted, by the expreſſion "what was received when the damſel was given in marriage," that he who gives away the damſel takes that preſent.

## DXI.

GÓTAMA:—Firſt the whole brothers take the perquiſite of their ſiſter; after them (ſome ſay before them) the mother *.

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* This text is attributed to CA'TYA'YANA by the compilers of the *Vivádárnava ſétu*, and the word father is interpolated by them: with that difference only they interpret the text as I do, in conformity with the gloſs of JI'MU'TAVA'HANA. T.

This laſt is the opinion of other legiſlators: thus HELÁYUDHA'. The meaning is, after the mother, that is, after her death. If the mother and father be living, it goes to thoſe two. So the *Dípacalicá*.

Some lawyers thus interpret the text: the whole brothers take the heritage of their ſiſter on failure of the mother and father, (ſome legiſlators ſay before them;) that relates to other property except perquiſites, and this term bears a general ſenſe: the heritage of a maiden goes to her parents, on failure of whole brothers; the eſtate of a married woman goes to her whole brother, on failure of her parents: for the ſake of this double caſe, it is added, "ſome *legiſlators* ſay."

But JÍMÚTAVÁHANA explains the text, after whole brothers it goes to the mother; for that coincides with the text of BAUDHÁYANA (DVII): "ſome ſay before them;" that is an opinion of other *legiſlators*.

Conſequently, the ſeveral property of a ſiſter received at any other time but her marriage, goes to her brother; ſuch is his opinion. But, according to this interpretation, "unmarried women," in the text of BAUDHÁYANA, is unmeaning; and the other opinion cited by GÓTAMA is moſt inadmiſſible and improper. In a gloſs on the text of BAUDHÁYANA, the word 'damſel' is ſuppoſed in the *Retnácara* to ſignify unmarried woman. But VIJNYÁNÉSWARA, in his gloſs on the text of YÁJNYAWALCYA, expounds "kinſmen," her huſband and the reſt; a diſtinction, *he adds*, will be noticed from other texts: conſequently, her eſtate goes to her kinſmen on failure of iſſue; and in that caſe, wealth received at *Bráhma* nuptials and the reſt goes to her huſband; but, in other forms of marriage, it devolves on her parents.

Thus the heir of the ſeveral ſorts of property held by a woman who leaves no iſſue, is determined; on failure of her father and mother, and of her brother, all her property goes to her huſband, under the text of CATYÁYANA. JÍMÚTAVÁHANA.

## DXII.

CÁTYÁYANA:—On failure of her parents and bro-

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thers, what she received from her kinsmen as a gift descends to her husband.

The grandson of another wife shall in this case inherit, say some lawyers. But RAGHUNANDANA holds, that, if she die without issue, the husband alone has a right, under the text of DÉVALA (CCCCLXXXIX), to the property of his wife bestowed on her by him after marriage: but her brother alone shall inherit, under the text of *Vrĭddha* CÁTYÁYANA (DIX), what was given her by her father and mother. It should not be objected, whence is it deduced, that wealth given by her husband is meant in the text of DÉVALA? Since *Vrĭddha* CÁTYÁYANA ordains the succession of her brother to her property given by her father and mother, it appears that the text of DÉVALA must relate solely to wealth given by her husband, for that completes the sense; but her brother alone succeeds to that which was bestowed on her by her father and mother. Since the word "that," in the text of YÁJNYAWALCYA, denotes the female property before mentioned, kinsmen, that is, brothers, are truly entitled to such wealth only as is different from the nuptial present subsequently noticed by YÁJNYAWALCYA; does not the text of DÉVALA, concerning the succession of a husband, also relate to wealth given at the time of marriage? If this be proposed, the answer is, No? for VIJNYÁNÉSWARA, author of a commentary on the code of YÁJNYAWALCYA, explains "kinsmen," husband and the rest. This opinion of RAGHUNANDANA appears consistent with common sense.

If her husband be not living, shall or shall not her brother obtain wealth given her at the time of her marriage in the form called *Bráhma* or the like? It should not be answered, the text, which propounds the succession of her brother, must necessarily be referred to other property, for the sake of obviating the contradiction to the text of MENU and the rest (DII); and thus her brother has no claim to the wealth given at *Bráhma* nuptials or the like, because no text ordains his succession. Were it so, the brother's son, who succeeds to all property indiscriminately on failure of heirs down to the son of a husband's sister, would be heir, under the text which will be cited from VRĬHASPATI, although a brother be living; which would be inconsistent with common

common ſenſe. To the queſtion thus propoſed, the anſwer is, as the huſband inherits, on failure of brothers, that wealth to which brothers have a demonſtrated title (DXII), ſo a brother inherits, on failure of the huſband, wealth to which huſbands have a demonſtrated title. Conſequently, texts ſhowing the ſucceſſion of huſbands and the reſt are adverſe to the claims of others while they are actually living, but do not contradict the ſucceſſion of others in order upon failure of them: and thus, it muſt be affirmed by RAGHUNANDANA, that, in default of her huſband, a brother alone inherits wealth given to a woman by her huſband, although the ſon of her ſiſter-in-law be living. This is actually confeſſed by JÍMÚTAVÁHANA. Hence the text above cited (DIX) relates to wealth given by her father and the reſt; and indirectly to property given by her huſband, if ſhe ſurvive him; and to wealth received at the time of her marriage, if ſhe die after her huſband.

On failure of the huſband and the reſt, *the following text is adduced:*

## DXIII.

VRĬHASPATI:—The ſiſter of a mother, the wife of a maternal or of a paternal uncle, the ſiſter of a father, the mother of a wife, and the wife of an elder brother, are declared equal to a mother.

2. If they leave no iſſue of their body, nor the ſon *of another wife of the huſband*, nor the ſon of a daughter, nor the *ſon's* ſon *of another wife*, the ſons of their ſiſters and ſo forth *ſhall therefore* inherit their property.

"Iſſue of their body;" ſon, daughter, and the reſt, before mentioned. "Son;" the offspring of another wife of the huſband. "Son of a daughter;" the daughter's ſon of another wife, who is the ſubject of a text above cited (CCCXCV). "Nor the ſon of him;" the ſon of another wife's ſon; but the daughter's ſon of another wife of the huſband is debarred from

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ſucceſſion, becauſe he confers no benefits. Conſequently, the ſon and ſon's ſon of another wife inherit before the ſiſter's ſon and other ſix heirs; and the daughter's ſon inherits before the huſband, as his own daughter's ſon, and as offspring of a *Bráhmaní* daughter; but after him, according to JIMÚTAVAHANA and the reſt, as above mentioned.

But others *thus interpret the text:* a ſon begotten in lawful wedlock, a daughter's ſon (and of courſe a daughter); his ſon, that is, the ſon of a ſon, or grandſon in the male line; and the huſband and other heirs ordained by expreſs texts, who are here underſtood from the connexion of the particle "nor;" on failure of all theſe, *we ſay*, a ſiſter's ſon and the reſt ſhall inherit in the order which will be mentioned, although the brother, the huſband's father and the reſt, and the ſon of another wife of the huſband and other claimants be living. Neither is the term "begotten in lawful wedlock" ſuperfluous as an epithet of ſon; for the ſon of another wife, and others, who are figuratively called ſons, muſt be excepted. Nor ſhould it be objected as a fault, that "ſon," to which the epithet is referred, becomes ſuperfluous. That form of expreſſion occurs in other texts *(for example,* "A ſon begotten in lawful wedlock, and one begotten on the wife by a kinſman, both ſhare the father's wealth"), and it excludes a remoter deſcendant of the body. Nor is it inconſiſtent with common ſenſe that the ſon-in-law ſhould inherit, although the ſon of another wife of the huſband be living; for it muſt be borne, like the ſucceſſion of a ſon-in-law, although the brother or the huſband's father be living. As the huſband of a daughter is by VRĬHASPATI figuratively called ſon, ſo is the ſon of another wife metaphorically called ſo by MENU. The *younger* brothers of a huſband, and the reſt, as well as the ſon of another wife, being conſidered as ſons, who ſhall firſt inherit? On this queſtion, if it be ſaid, the ſon of another wife ought to inherit firſt, in right of ſuperior benefits conferred by him, becauſe he gives three principal funeral cakes which ſhould be offered by the ſon of a proprietor; the anſwer is, that is admiſſible; but he cannot claim ſucceſſion before the huſband, ſince he derives his title through him. It ſhould not be objected, that the huſband's brother and the reſt, deriving their title through the father of the huſband, would not inherit while the father-in-law is living. The

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succeſſion of the huſband's father and the reſt is not deduced from any other text. Nor ſhould it be argued, that he would have a prior title of inheritance, becauſe he has a right to perform the obſequies before the huſband. Such a maxim has been obviated, ſince the title of a ſiſter's ſon and the reſt to take the heritage has been propounded, even though the father-in-law, or other perſon qualified as a *ſapinda* to perform the obſequies, be living. The huſband's brother and the reſt, as well as his ſon by another wife, being equally conſidered as ſons, there is no authority to prove that one ſhould inherit before the huſband, the reſt after him. Nor ſhould it be argued, that the ſon of another wife being figuratively called ſon, when treating of thoſe who are ſecondarily ſo called, it is therefore acknowledged that he redeems *his ſtepmother* from the hell named *put;* not *ſo*, theſe ſons of a ſiſter, and the reſt, who are figuratively called ſons, merely that they may take the heritage; and thus they are not equal to a ſon of another wife. The huſband confers many more benefits than he. As for the remark, that her own ſon is ſuperior to all others, ſolely becauſe he delivers her from the hell called *put*, that is futile; for, were it ſo, her own ſon and the child of another wife would have equal claims *to her inheritance.* If it be ſaid, her ſon has precedence, becauſe he performs both offices of redeeming *her father and huſband* from the hell called *put*, and thereby benefits the family of her own father and that of her huſband; the anſwer is, ſince the ſon of her ſiſter married to the ſame huſband with herſelf alſo performs both offices, he would have an equal claim with her own ſon, and would have precedence above the iſſue of any other wife of the huſband; and if her own ſon be acknowledged ſuperior to both thoſe who diſcharge the debt of offering a funeral cake, to be ſhared by her in the double ſet of oblations, it cannot be affirmed that his title is ſuperior, ſolely becauſe he delivers from the hell called *put.* Again; whatever claim the ſon of another wife may have, it is certainly true that no argument exiſts to prove that the grandſon of another wife inherits before the huſband. Theſe authors ſo expound the law.

We reſume the ſubject. Have the ſons of ſiſters and the reſt a co-ordinate title, or a ſucceſſive one? Not the firſt; for, aſſociation ſhould not be aſſumed if ſucceſſive order be poſſible; and the ſons of a ſiſter, and others, of whom the deſignations are incompatible,

incompatible, ought not to be aſſociated. They ſhould therefore ſucceed in order as enumerated. Accordingly the ſon of a ſiſter may be the firſt heir. It ſhould not be objected, that the reaſon of the law prevents this, becauſe the ſucceſſion of a ſon-in-law, while a brother of the huſband exiſts, is contrary to rule. Since a ſon-in-law may regularly ſucceed, although an elder *brother of the huſband* be living, he may alſo regularly ſucceed in preference to a younger *brother of the huſband;* but if the text be revered, the order of ſucceſſion ſtated therein muſt alſo be reſpected. Some authors ſo expound the law. But that is wrong; for, it is improper that one who confers leſs benefits ſhould inherit, while another who confers greater benefits, other than that which is afforded to the woman herſelf by means of obſequies, is living.

Since her huſband's elder brother performs obſequies as a *ſapinda,* and the younger brother of the huſband confers equal benefits, a ſon-in-law and the reſt would not inherit while either of theſe exiſt: this ſhould not be affirmed. The younger brother of a huſband alſo preſenting the funeral cake as a *ſapinda,* he is again mentioned as a ſon *by fiction of law,* to ſhow that his oblation of the funeral cake is indiſpenſable: and thus it follows, that the huſband of a daughter, and others, mentioned in a ſingle text as heirs of a mother-in-law who leaves no iſſue, and ſo forth, muſt neceſſarily offer the funeral cake. Conſequently, the neceſſity of conferring benefits on the woman herſelf is the ſole cauſe why a ſon-in-law and the reſt rank above the elder brother of a huſband. It is therefore demonſtrably juſt, that a ſon-in-law and the reſt ſhould inherit, although the elder brother of the huſband and other heirs be living.

But others hold, that a ſon-in-law does not inherit if the elder brother of the huſband be living, for he is not a kinſman connected by the funeral cake; but *he inherits* on failure of the huſband and other heirs who are expreſsly ordained by law, the ſucceſſion of thoſe who confer benefits being deduced from reaſoning. Among *ſapindas,* the younger brother of the huſband has the firſt claim; next, the ſons of her huſband's elder and younger brothers; on failure of them, the ſon of the huſband's ſiſter; after him, in default of kinſmen within the degree of *ſapinda,* or of *ſamánódaca,* including fourteen perſons aſcending and deſcending, the right of her father's kinſmen being *in that*

*caſe*

*case* celebrated, the sons of her brother or sister inherit; next, on failure of kindred in the father's or mother's families, the husband of a daughter; and, lastly, the highest of twice-born men.

That is denied; for, in the line of *sapindas*, there is no proof that the husband's younger brother shall inherit first, although his father, who is nearer of kin, be living; nor, in the line of her father's kindred, that the sons of her brother or of her sister shall first inherit. If it be said they are preferable heirs, because they are her sons *by fiction of law;* it must be remembered, that all *sons, secondarily so called*, take the heritage immediately after a true son. Hence the method approved by JÍMÚTAVÁHANA should be followed. It may be thus stated: the order of succession corresponds with the degree of benefit conferred; first, the husband's younger brother inherits, because he offers a funeral cake to her and to her husband, and presents oblations to three persons to whom cakes were to be offered by her husband, and to two persons to whom they would have been offered by her son. After him, the sons of her husband's younger and elder brothers inherit together; because they offer the funeral cake to her and to her husband, to two persons to whom oblations would have been presented by her son, and to two persons to whom funeral cakes were to be offered by her husband. On failure of those, the son of her sister *inherits*, because he offers the funeral cake to her, and to three persons, the maternal grandfather and the rest, to whom oblations would have been presented by her son. After him, the son of her husband's sister succeeds, because he offers the funeral cake to her, and to three persons, her father-in-law and the rest, to whom oblations were to be presented by her husband. Since the husband has a weaker claim than the son, it must be inferred, that he who performs rites incumbent on her husband, has a weaker claim than he who fulfils duties incumbent on her son: this order of succession is therefore right. So JÍMÚTAVÁHANA and RAGHUNANDANA.

But the son of her husband's sister also performs rites incumbent on her son, for he performs the *s'rádd'ha* for the paternal grandfather and other ancestors of her son, and of his father. Yet the son of her husband's sister, performing rites incumbent on both, has not a stronger claim than he who merely performs those which were incumbent on her son. It should not be answered,

anſwered, that, according to RAGHUNANDANA, her ſiſter's ſon has a ſtronger claim than the ſon of her huſband's ſiſter, becauſe he ſatisfies ſix anceſtors of her ſon, including the maternal grandmother and the reſt, while the other ſatisfies four anceſtors of her ſon, the paternal grandfather and grandmother and the reſt. The ſon of her huſband's ſiſter is ſuperior, becauſe he ſatisfies ſix anceſtors of her huſband, namely his father and the reſt, and his mother and ſo forth. Nor ſhould it be argued, *on the other hand*, that his claim is completely eſtabliſhed in right of his ſatisfying thoſe ſix perſons. He who contents four perſons who ought to be ſatisfied by her ſon, is inferior to him who contents ſix perſons who ought to be ſatisfied by the ſame *.

As for the obſervation, that a ſiſter's ſon performing rites incumbent on a brother has a ſuperior claim, becauſe a brother has a ſtronger title under a text above cited (CCCCXCIII 2), that is not appoſite in the caſe of wealth received at the time of marriage in the form called *Brâhma* and ſo forth; for in ſuch inſtances the huſband has the ſtronger title.

Since the line of maternal anceſtors is not chiefly conſidered, the ſon of the huſband's ſiſter, offering the funeral cake to the ſon's paternal anceſtors, ought to be firſt heir, under the rule, that, on the competition of chief and ſubordinate *claimants*, the office devolves on the chief perſon. Again; the ſon of the huſband's ſiſter alſo confers favours on the huſband, who is one of two perſons conſtituting one body. This alſo may be objected.

On failure of him, the brother's ſon inherits *the ſeparate property of the woman*, becauſe he offers two funeral cakes, which would have been preſented by her ſon, *one* to the maternal grandfather, the other to the maternal great-grandfather, and becauſe he alſo offers the funeral cake to the woman herſelf. In default of him, the huſband of her daughter *inherits*, becauſe he offers her own funeral cake. JÍMÚTAVÁHANA adds, 'on failure of theſe ſix again, it muſt be underſtood, that her huſband's father, and elder brother, and ſo forth, inherit her property, the ſucceſſion devolving on the neareſt kinſman related by the funeral cake.' Conſequently, on failure of heirs, including the huſband of her daughter, the ſucceſſion devolves on *ſapindas*; and the father of her

* I ſuſpect an error. As the text ſtands, the argument is inconſiſtent. T.

her hufband is firft heir to her eftate. Others fay, the grandfon of another wife of her hufband has a preferable claim, and next the great-grandfon of another wife, becaufe they are heirs of her hufband. Immediately after her father-in-law, the elder brother of her hufband *inherits;* next, her father-in-law's great-grandfon in the male line, becaufe he is the neareft *fapinda:* after him, the paternal grandfather of her hufband, or his iffue; next, the paternal great-grandfather of her hufband, or his offspring; and fo forth, including fourteen perfons afcending and defcending: after thefe, her kindred on her father's fide, as far as the tenth perfon; after them, the family of her mother; and, laftly, the king *takes the eftate*, except the property of a *Bráhmaní* woman. This brief expofition *may fuffice.*

The ground of this *order of fucceffion* is the performance of obfequies; for it is fhown, in the cafe of property left by a man, that heirs fucceed in right of benefits conferred. On this fubject,

## DXIV.

The *Viſhnu purána:*—A fon, a fon's fon, the fon of a grandfon, or like them a brother or his offspring, or a *fapinda* or his iffue, become entitled, O king! to perform *funeral* rites:

2. On failure of all thefe, the offspring of a *famánódaca;* or, *after them*, kinfmen on the mother's fide, connected by the funeral cake, or by oblations of water.
3. But if both families be extinct, the rites, O king! muft be performed by women; or the obfequies for the deceafed muft be celebrated by intimate companions.
4. Let the king caufe obfequies to be performed for him who leaves no kinfmen nor wealth.

*The fame:*—By the *fapindas* and *famánódacas* of the father

father and mother, by intimate companions, or by the king, who takes an escheat,

6. The first rites must be performed; but the last rites shall only be celebrated by sons and the rest*.

First, a brother; next, his offspring: the apposition of the terms is in the sense of association; 'a brother with his offspring:' and the descendents of a brother perform obsequies according to *the degree of* proximity. Next, a *sapinda*, namely a father and the rest, and their issue, including females, *that is*, the wife of a son and so forth. After them, the offspring of a *samánódaca*, as mentioned in a text of law, "the relation of the *samánódacas*, or those connected by an equal oblation of water, ceases with the fourteenth person." Next, *sapindas* and *samánódacas* on the mother's side. If both families, that of the father, and that of the mother, be extinct, obsequies shall be performed by women, meaning daughters of the family and the rest; on failure of all these, by intimate companions, that is, by friends; in default of them, by the king; *but* since he cannot officiate in person, he must cause obsequies to be performed by the intervention of some man equal in class.

"The last rites," subsequent to the first annual obsequies, that is, *other* annual *śrádd'has* and so forth. In like manner, women also requiring obsequies, the right of performing for them ceremonies relative to another world should follow the same order. But in this case the terms "a brother or his offspring," are not apposite; for these are not *sapindas of a married woman:* the order must therefore be understood with the omission of them. On failure of kindred within the degree of a *samánódaca*, the father and the rest (meaning his kinsmen) *perform obsequies*, under the text *above cited* (DXIV 5). So RAGHUNANDANA; but according to others, because reasoning shows the kindred of her father to be more venerable than those of her mother. On failure of

* The first funeral ceremony is the cremation of the corpse; the middle rites consist in gathering the ashes, and performing the obsequies for a person recently deceased: these extend to the first annual *s'rádd'ha:* the last rites are the monthly, annual, and other obsequies for ancestors long since dead. T.

of them, the kindred of the mother, and the moſt exalted twice-born men, are qualified to perform obſequies for the deceaſed, under the text, "on failure of them, the higheſt twice-born man." They inherit the eſtate becauſe they confer benefits.

Although women, included among theſe *remote heirs*, may perform funeral rites for the deceaſed, under the text of the *Viſhnu purána*, "on the anniverſary of deceaſe, the laſt rites may be performed even by women;" they do not ſhare the property, for a text expreſſes, "diſtribute not wealth among women, ignorant men, and ſuch as neglect their duties."

Others hold, that the claim of a ſiſter's ſon and the reſt follows immediately after that of the woman's own iſſue, becauſe they are declared equal to a ſon: their claim, as before, *is regulated* by the degree in which they perform rites incumbent on a ſon; elſe there could be no certainty when theſe perſons, not mentioned in the *Viſhnu purána*, would have a right to perform funeral rites.

RAGHUNANDANA affirms, that, on failure of heirs, including kinſmen bearing the ſame family name, the father is firſt qualified to perform the funeral rites for a woman; on failure of him, her brother; next, the ſon of her own ſiſter, of her huſband's ſiſter, of her brother, and, laſtly, the huſband of her daughter, under the text of 'SÁTÁTAPA: *after theſe*, the maternal uncle, and the pupil of her huſband, claim that right; and, laſt of all, other kindred of her father.

## DXV.

'SÁTÁTAPA:—A maternal uncle *ſhall perform the obſequies* of his ſiſter's ſon, and a ſiſter's ſon the obſequies of his maternal uncle; *a ſon-in-law, the funeral rites* of his father-in-law; *a pupil, thoſe* of his ſpiritual teacher; *a grandſon, the obſequies* of his maternal grandfather.

2. The funeral cake muſt be offered to their wives and ſiſters, to their mothers and fathers: this is a rule ſettled by lawgivers verſed in holy writ.

According to his opinion, a similar order should be understood in succession to property. Such is the inheritance of separate wealth left by a married woman: however, land given by her husband does not devolve on the heirs of her separate property, but on those of her husband's, under the text above cited (CCCCLXXVII 2); for this follows of course, since the precept would be unmeaning, were the heirs of the woman intended: the legal heirs of her husband must therefore be understood. This text is expounded by authors as relating to an estate devolving on a wife *by failure of male issue.* Wealth possessed as property in right of relation or affinity, is heritage in the acceptation of the word *(dāya)*: now it is determinately connected with the condition, 'after the title of a former owner has expired:' hence "a gift *(dāya)* or heritage *received* from her husband" in effect signifies wealth received in right of her connexion with him. While he lives, it must be preserved *with frugality*, not dissipated without his assent; but after his death she has independent power over it: however, though she have such power, her enjoyment of it is alone authorized, not lavish expence at pleasure. Such is the virtual sense; and this relates only to immoveable property, according to the *Retnácara*. By the expression in the subsequent verse, "strictly obedient to her spiritual parents," it is suggested that the husband of the woman is dead; from the term "childless" it follows, that she is become owner of the estate: and this text is propounded by CÁTYÁYANA incidentally. In a former precept (CCCCLXXV 3) a woman had been declared to have independent power over her own separate property, even though it should consist of lands and houses: recollecting the other sorts of wealth held by a woman as her property, the legislator subjoins this text to regulate her dependence in respect of such wealth.

Must not this text relate to the peculiar property of women, since it is placed under that title? It should not be answered, were it so, the word "childless" would be unmeaning. It is connected with the terms, "strictly obedient to her spiritual parents:" thus the meaning is, if a son be living, she is subject to his control; on failure of him, she must strictly obey her spiritual parent. To the doubt thus proposed the answer is, No; for a question requiring solution shall prevail before the title under

consideration,

consideration, in a matter which bears the stamp of scripture *. Thus the independent power of a woman over her peculiar property technically so called, which she possesses as her own, having been propounded, a question arises, what is the rule in respect of other sorts of property held by her as her own? In fact it must be affirmed, that the legislator, speaking of lands and houses (CCCCLXXV 3), does intend other immoveables besides such as her husband gave her; else it would contradict NÁREDA (CCCCLXXVI). Again; a question arises, whether the rule be the same in respect of immoveables given by her husband, and in regard to other sorts of property held by a woman as owner thereof? In answer to the question, what is the rule respecting immoveables given by her husband, and other sorts of property possessed by her? this text is cited; and the gift or heritage *(dâya)* of her husband there signifies his wealth, that is, the property of the wife formerly belonging to him. It follows, from the epithet "*received* from her husband," that she has independent power over wealth devolving on her from her father and the rest by failure of nearer heirs.

But MISRA holds, that she is also subject to controul in respect of immoveable property descending to her from her husband through the intervention of her son, in other words, property of a son devolving on his mother. JÍMÚTAVAHANA and the rest affirm, that a woman is subject to controul in respect of wealth any-how devolving on her alone. Thus "childless," in the text above cited, supposes property descending to her by failure of nearer heirs. Consequently, immoveables, even though given by her husband, shall be taken by *his* heirs only.

A husband having independent power, by the text of CÁTYÁYANA (CCCCLXX), over wealth acquired by his wife during coverture, and a father being also owner of wealth earned by his unmarried daughter, (for the word son, in the text of MENU, Book III, Ch. I, v. LII 1, signifies both son and daughter, since it is not determinately restricted to the *masculine* gender;) what is the rule concerning property acquired by a widow? It should not be answered, her brother is sole heir, because none can contest



* And therefore a text should be so expounded as to satisfy doubts which may arise, instead of adhering strictly to the subject of the title under which the text is placed. T.

test his claim, since her husband, the *only* obstacle to his succession, is dead. The brother is pronounced heir to that wealth only which was given by her parents (DIX). To the question thus proposed, the answer is, No; for it has been already mentioned, that the husband, mother, and brother are, in every instance, heirs on failure of opponents.

Again; according to the opinion of those who contend that the legal heirs of the daughter succeed, on her demise, to the estate of her father which had devolved on her, wealth descending to a woman in default of nearer heirs is her peculiar property. Even in that case, the rule of decision is this: the mention of the six-fold property of women, established by authors to be an exception of fewer distinctions, relates to property over which they universally have independent power by the tenor of the precept. For the estate of her father, though devolving on his daughter after her marriage, becomes the property of her husband, since he is declared by the text above cited (Book III, Ch. I, v. LII 1) to have dominion over *all* her property excepting the six sorts specified: but that precept does not relate to the peculiar possessions of a woman, since it is opposed by a separate text. Thus wealth received a few days before marriage is not the peculiar property of a woman in the technical acceptation of the term, although she have independent power over it. In like manner, since the husband has in some instances dominion over wealth acquired by his wife, a widow has not universally an uncontrouled power over her own acquisitions in general, although she sometimes have such power. Here again, although the husband have a title in the wealth acquired by his wife during coverture, his ownership is subject to the controul of his wife; after his death, it shall be enjoyed by her alone; but, if she die *before him*, it shall be taken by the legal heirs of her husband: the regular claimants of a woman's separate property have no right in this instance. If her husband die first, her *acquired* wealth becomes the sole property of this woman, who earned it; in that case, it shall be taken by legal heirs of her peculiar effects: but if the wife die first, her wealth becomes the sole property of her husband, and shall therefore be taken, *after his demise*, by his legal heirs. If partition be made during the life *of the married pair*, such wealth shall be divided between them, according to the opinion of those

who contend for partition between husband and wife: the sons obtain no share of it, since no text ordains *their participation.* This should be admitted, because legislators have delivered no other rule concerning wealth acquired by women, because the husband is declared to have dominion over it, and because the father and son are observed to share the wealth which is acquired by the son. Thus some authors expound the law.

But, according to JÍMÚTAVÁHANA, RAGHUNANDANA, and the rest, the wife is sole owner of wealth acquired by her even during coverture; yet she has not independent power over it so long as her husband lives: *for* the negative in the text of MENU (Book III, Ch. I, v. LII 1) conveys the sense of imperfection. Consequently, they have no wealth exclusively their own; and the imperfection *of their property* consists in the want of uncontrouled power. It must be therefore understood, that the legal heirs of a woman's peculiar property succeed also to this wealth. Although it be suggested that the same should be likewise affirmed in respect of her father's estate devolving on a daughter *by failure of nearer heirs*, still we do not investigate this *claim*, because it is asserted by JÍMÚTAVÁHANA and RAGHUNANDANA, that the legal heir of her father succeeds to that estate.

A daughter may at pleasure give away to any person whomsoever the exclusive property of her mother, which has devolved on her; after her death, the daughter's son-in-law and the rest shall obtain that *which has not been aliened.* It should not be argued, that a daughter is only permitted to enjoy for life the peculiar property of a woman, *which she has inherited,* like the estate left by a man *to which she has succeeded.* That has not been asserted by JÍMÚTAVÁHANA; and no reasoning supports it.

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